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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920

No. 117

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF
MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED JUNE 2, 1919.

(27,147)

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SUPREME COURT OF THE UNITED STATES.

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PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF
MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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1 The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiff in Error,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant
in Error.

Petition for Writ of Error.

The petition of St. Louis-San Francisco Railway Company respectfully shows:

That it is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri.

That in a certain cause pending in said Supreme Court of the State of Missouri wherein James W. Lusk, William C. Nixon and William B. Biddle, Receivers of the railroad and property of St. Louis and San Francisco Railroad Company, were appellants, and Public Service Commission of the State of Missouri was respondent, said Supreme Court of the State of Missouri did, on March 15, 1919, make and enter of record in said cause a final judgment in favor of said respondent and against said appellants by which it was ordered and adjudged that a certain order of respondent, requiring said appellants to re-route certain interstate passenger trains of said St. Louis and San Francisco Railroad Company operated by said appellants as such Receivers said appellants being required by said order to operate said interstate passenger trains through the City of Caruthersville, Missouri, to make regular stops at said City and to receive and discharge passengers, did not impose unnecessary or undue burdens on interstate commerce or violate Section 8 of

2 Article I of the Constitution of the United States, and that said order of respondent was not unjust, unreasonable, oppressive or illegal, said Supreme Court of the State of Missouri by its said final judgment thereby ordering and adjudging that said order of respondent was a just, reasonable, lawful and legal order.

That said judgment of the Supreme Court of the State of Missouri was and is a final judgment in the highest court of the State of Missouri in which a decision could or can be had.

That said Receivers of the railroad and property of said St. Louis and San Francisco Railroad Company, have been duly discharged as such Receivers, and your petitioner has succeeded to and is now possessed of all the right, title and interest of said St. Louis and San Francisco Railroad Company and of said Receivers in and to the railroad and property of said St. Louis and San Francisco Railroad Company, and has been duly substituted in lieu of said Receivers as party appellant in said Supreme Court of Missouri in the cause aforesaid by order duly made and entered of record therein.

That the adjudication by said Supreme Court of the State of Missouri by its final judgment, as aforesaid, that said order of re-

spondent is not in violation of the provisions of Section 8 of Article 1 of the Constitution of the United States, giving to Congress the exclusive right to regulate commerce among the several states, fully appears in the record, opinion and final judgment of said Court, and that by said final judgment manifest error was committed to the great damage of your petitioner.

Wherefore, your petitioner respectfully prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of Missouri commanding said Court to certify and send to said Supreme Court of the United States a full and complete transcript of the record and proceedings of said Supreme Court of the State of Missouri in the cause aforesaid; that citation be granted and signed; that the bond herewith

presented be approved; that the errors committed by said Supreme Court of the State of Missouri may be reviewed, and that said judgment of said Supreme Court of the State of Missouri in the cause aforesaid and every part thereof may be reversed; and your petitioner will ever pray.

W. F. GRAUS,
E. T. MILLER.

Attorneys for Plaintiff in Error.

4

[Endorsed.]

The Supreme Court of the State of Missouri.

St. Louis-San Francisco Railway Company, Plaintiff in Error,
vs.

Public Service Commission of the State of Missouri,
Defendant in Error.

Petition for Writ of Error.

Filed May 2, 1919. J. D. Allen, Clerk Supreme Court.

5

The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiff in Error,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant
in Error.

Assignment of Errors.

Now comes St. Louis-San Francisco Railway Company, Plaintiff in Error in the above entitled cause, and says that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Missouri in the above entitled matter there is manifest error in this, to-wit:

First. Said Court erred in its decision and judgment in upholding as legal and valid the order of the Public Service Commission of Missouri, Defendant in Error in this cause, and in hold-

ing and adjudging that said order did not, and does not, constitute a regulation of, interference with and burden upon interstate commerce, contrary to the provisions of the third clause of Section 8 of Article I of the Constitution of the United States.

Second. Said Court erred in its decision and judgment in rendering judgment in favor of Defendant in Error and against the contention that said order of the Public Service Commission of Missouri was illegal and void as constituting a regulation of, interference with or burden upon interstate commerce, contrary to the provisions of the third clause of Section 8 of Article I of the Constitution of the United States.

6 Third. Said Court erred in refusing to adjudge that said order of the Public Service Commission of Missouri was illegal, oppressive, arbitrary and void.

Fourth. Said Court erred in its decision and judgment in holding that said order of the Public Service Commission of Missouri on its face does not relate to or cover interstate commerce, but solely on its face relates to and is levelled at local and interstate transportation service and facilities at Caruthersville for passengers, and that hence said order on its face is not void as an interference with interstate commerce.

Fifth. Said Court erred in its decision and judgment in holding that if the order complained of affects interstate commerce at all, it does not do so directly, or as the gist of the matter, but only indirectly and incidentally.

Wherefore, said Plaintiff in Error asks by reason of each and every one of the foregoing assignments of error that the judgment and decision of the Supreme Court of the State of Missouri herein be reversed and for naught held, and that Plaintiff in Error may have and recover all costs herein expended.

W. F. EVANS,
E. T. MILLER,
Attorneys for Plaintiff in Error.

7 [Endorsed.]

The Supreme Court of the State of Missouri.

St. Louis-San Francisco Railway Company, Plaintiff in Error,

v.

Public Service Commission of the State of Missouri, Defendant in Error.

Assignment of Errors.

Filed May 2, 1919.

J. D. ALLEN,
Clerk Supreme Court.

The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiff in Error,

VS.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

STATE OF MISSOURI,
City of St. Louis, ss:

Bond.

Know all men by these presents, that we, St. Louis-San Francisco Railway Company, a corporation, as Principal, and United States Fidelity & Guaranty Company as Surety, are held and firmly bound unto Public Service Commission of the State of Missouri in the sum of Two Thousand Dollars, to the payment of which, well and truly to be made to said Public Service Commission, and its successors, we jointly and severally bind ourselves, our respective successors, heirs, executors and administrators, firmly by these presents.

Sealed with our seals this 2nd day of May, 1919.

Whereas, the above-named Plaintiff in Error has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered by the Supreme Court of the State of Missouri in the above entitled cause.

Now, Therefore, the condition of this obligation is such that if the above-named Plaintiff in Error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

[SEAL.] ST. LOUIS-SAN FRANCISCO RAILWAY
COMPANY,

By F. A. HAMILTON,
Vice-President.

Attest:

S. J. FORTUNEY,
Secretary.

UNITED STATES FIDELITY &
GUARANTY COMPANY,

By EDW. R. NIEHAUS

Its Attorney in Fact.

[SEAL.]

Attest:

Secretary.

Approved:

HENRY W. BOND,
*Chief Justice of the Supreme
Court of the State of Missouri.*

10 The Supreme Court of the State of Missouri.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiff in Error,
v.
PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant in Error.

Order Allowing Writ of Error.

The above entitled matter coming on to be heard upon the petition of the Plaintiff in Error for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, and upon examination of said petition and the record in said matter, and desiring to give petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter.

It is ordered that a writ of error be, and is hereby, allowed to this Court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby, approved, this 2nd day of May, 1919.

HENRY W. BOND,
Chief Justice of the Supreme Court
of the State of Missouri.

11 [Endorsed.]

The Supreme Court of the State of Missouri.
St. Louis-San Francisco Railway Company,
Plaintiff in Error,
v.
Public Service Commission of the State of Missouri,
Defendant in Error.

Order Allowing Writ of Error.

Filed May 2, 1919. J. D. Allen, Clerk Supreme Court.

12

The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiff in Error.

VS.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Defendant in Error.

UNITED STATES OF AMERICA, vs:

The President of the United States of America to the Honorable
Judges of the Supreme Court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said Supreme Court of the State of Missouri, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in that certain suit between St. Louis-San Francisco Railway Company as substituted appellant in lieu of James W. Lusk, William C. Nixon and William B. Biddle, Receivers of the railroad and property of St. Louis and San Francisco Railroad Company, and Public Service Commission of the State of Missouri, as respondent, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such, their validity, a manifest error hath happened, to the great damage of the petitioner for this writ, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in its behalf, do command you, if judgment be

13 therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st day of June, 1919, in said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the said Supreme Court, the 2 day of May, in the year of our Lord, 1919.

[Seal of the United States District Court of Missouri.]

EDWIN R. DURHAM,
Clerk of the United States District
Court for the Central Division of
the Western Judicial District of
Missouri,
By H. G. GIESBERG,
Deputy.

Allowed:

HENRY W. BOND,
*Chief Justice of the Supreme Court
of the State of Missouri.*

14

[Endorsed.]

The Supreme Court of the State of Missouri.

St. Louis-San Francisco Railway Company,
Plaintiff in Error,

v.

Public Service Commission of the State of Missouri,
Defendant in Error.

Writ of Error.

Filed May 2, 1919. J. D. Allen, Clerk Supreme Court.

15

Citation.

THE UNITED STATES OF AMERICA, vs:

To the Public Service Commission of the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at Washington, D. C., within thirty (30) days from date hereof, pursuant to writ of error filed in the Clerk's office of the Supreme Court of the State of Missouri, wherein St. Louis-San Francisco Railway Company is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered by you and complained of by said Plaintiff in Error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable Henry W. Bond, Chief Justice of the Supreme Court of the State of Missouri, this 2 day of May, 1919.

HENRY W. BOND,
*Chief Justice of the Supreme Court
of the State of Missouri.*

Attest:

J. D. ALLEN,
*Clerk Supreme Court of the
State of Missouri.*

Due and legal service of the foregoing citation is hereby duly accepted and acknowledged this 2 day of May, 1919.

PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI,
RICHARD PERRY SPENCER,

General Counsel.

By JAMES D. LINDSAY,

*Assistant Counsel to Public
Service Commission.*

16

[Endorsed.]

19319.

The Supreme Court of the State of Missouri.

St. Louis-San Francisco Railway Company,
Plaintiff in Error,

v.

Public Service Commission of the State of Missouri,
Defendant in Error.

Citation.

Filed May 2, 1919. J. D. Allen, Clerk Supreme Court.

17

The Supreme Court of the State of Missouri.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiff in Error,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Defendant
in Error.

Precipe for Transcript.

The Clerk will please incorporate in the transcript of record to be filed in the Supreme Court of the United States the record in this Court being contained in the Abstract of Record filed herein, a copy of the opinion and judgment of this Court and of the dissenting opinion of certain Judges filed herein, and a copy of the orders of this Court relating thereto and to the submission of this cause, and orders subsequent thereto, and a copy of the transcript from the Circuit Court of Cole County, Missouri.

W. F. EVANS,

E. T. MILLER,

Attorneys for Plaintiff in Error.

Service of the within and foregoing is hereby acknowledged this 2nd day of May, 1919.

PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI,
By RICHARD PERRY SPENCER,
General Counsel,
JAMES D. LINDSAY,
*Assistant Counsel to Public
Service Commission.*

18

[Endorsed.]

The Supreme Court of the State of Missouri.

St. Louis-San Francisco Railroad Company, Plaintiff in Error,
vs.

Public Service Commission of the State of Missouri, Defendant in
Error.

Precipe for Transcript.

Filed May 2, 1919. J. D. Allen, Clerk Supreme Court.

19 In the Supreme Court of the State of Missouri, October Term,
1915.

Be it remembered that on December 11, 1915, there was filed in the office of the Clerk of this Court a transcript of judgment and order granting appeal from the Circuit Court of Cole County, Missouri, in a certain cause wherein James W. Lusk, William C. Nixon and William B. Biddle, Receivers of the railroad and property of the St. Louis and San Francisco Railroad Company, were plaintiffs-appellants, and the Public Service Commission of the State of Missouri was defendant-respondent, which said transcript of record is, in words and figures, as follows:

(*Judgment.*)

In the Circuit Court of Cole County, Missouri, Regular November Term, 1915, Monday November 15th, 1915, First Day.

JAMES W. LUSK, WILLIAM C. NIXON and WILLIAM B. BIDDLE, Receivers of the Railroad and Property of the St. Louis and San Francisco Railroad Company, Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Defendants.

Certiorari.

Now come the parties to the above entitled cause by their attorneys and said cause having been heretofore tried and submitted to the

Court and duly taken under advisement and the Court having fully considered the same and being fully advised in the premises doth order and adjudge that the orders of the Public Service Commission of the State of Missouri as made and entered on June 2nd, 1915 upon the complaint of W. D. Byrd et al. being respectfully Mayor and Members of the Board of Alderman of the City of Caruthersville, Missouri being case No. 577 on the docket of said commission against the Public Service Commission of Missouri and which the
20 petitioners herein seek to have reviewed in this proceeding, be in all things affirmed.

(Order Granting Appeal.)

Regular November Term, 1915, Tuesday, November 16th, 1915,
Second Day.

JAMES W. LUSK et al., Plaintiffs,

vs.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Defendants.

Now again at this day come the plaintiffs by their attorneys and file application and affidavit for appeal and said application is taken up by the Court and appeal granted to the Supreme Court of this State.

STATE OF MISSOURI,
County of Cole, ss:

I, Chas. L. Petit, Clerk of the Circuit Court within and for Cole County and State of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the Judgment and the order granting appeal in the above entitled cause as fully as the same appears of record in my office.

Witness my hand and official seal, done at office in the City of Jefferson, this 1st day of December, 1915.

[SEAL.]

CHAS. L. PETIT,
Clerk Circuit Court.

21 And afterwards, to-wit, on the 9th day of February, 1916, there was filed in the office of the Clerk of said Supreme Court appellants' abstract of record in said cause, containing the record on appeal to said Supreme Court, which said abstract of record is in words and figures as follows:

22 In the Supreme Court of Missouri, Division No. —, April Term, 1916.

No. 19319.

JAMES W. LUSK, WILLIAM C. NIXON, and WILLIAM B. BIDDLE, Receivers of the Railroad and Property of the St. Louis and San Francisco Railroad Company, Appellants,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Appeal from the Circuit Court of Cole County, Missouri.

Appellants' Abstract of Record.

This action was instituted in the Circuit Court of Cole County, Missouri, by appellants filing in the office of the clerk of said court on July 28, 1915, their petition for certiorari, or writ of review, to review the decision of respondent in the case of W. D. Byrd et al.

23 v. Appellants and the St. Louis and San Francisco Railroad Company, being case No. 577 on the docket of respondent.

Said petition for certiorari, or review, was filed within thirty days after appellants' motion for rehearing was denied by respondent. Said motion for rehearing is for convenience set out in the appendix hereto. Said petition, omitting caption and signatures, is as follows:

Petition for Writ of Review.

Come now the petitioners by their attorneys and show to the Court that they are the duly appointed, qualified and acting receivers of the railroad and property of the St. Louis and San Francisco Railroad Company, a corporation of the State of Missouri; that at all the times herein stated said petitioners were, and are now, operating the lines of railroad of said St. Louis and San Francisco Railroad Company in the State of Missouri and in other States in commerce between the several States as common carriers for the transportation of persons and property, and as such are subject to the laws of the United States regulating and affecting interstate commerce; that the respondent is the Public Service Commission of the State of Missouri, and as such is, and at the times herein stated was, exercising such powers as are provided for in the Act of the Legislature of Missouri of 1913 known and designated as the Public Service Commission Act.

Petitioners further state that on or about the — day of December, 1914, a proceeding was instituted by complaint before respondent by W. D. Byrd et al., being, respectively, the Mayor and members of the Board of Aldermen of the City of Caruthersville, Mis-

souri, the nature and purpose of which was to require petitioners to re-route certain of their interstate passenger trains by requiring said trains to be run and operated to and through the said City

24 of Caruthersville, said proceeding being No. 577 on the docket of respondent.

Petitioners further state that upon the filing of the aforesaid complaint respondent took cognizance thereof and set the same for hearing at the City of Caruthersville in Pemiscot County, Missouri, for January 29, 1915; that upon said hearing such proceedings were had that respondent thereafter entered an order directing petitioners to re-route certain of their interstate passenger trains, being trains Nos. 801 and 802, running from the City of St. Louis, Missouri, to the City of Memphis, Tennessee, through the said City of Caruthersville, and that said trains, and each of them, stop to receive and discharge passengers at petitioners' depot at said city, thereby attempting to deny petitioners the right to run and operate their said interstate trains direct from Hayti, Missouri, to Grassy Bayou, Missouri, and return; that said order was entered by respondent at its office in Jefferson City, Missouri, on June 2, 1915, was affirmed on July 2, 1915, and petitioners were on the date last aforesaid given sixty (60) days therefrom in which to comply with the provisions of said order.

Petitioners further state that in due time they filed with respondent their motion for a rehearing, alleging therein, among other things, that the respondent was without authority to make said order, and that in assuming jurisdiction in the premises in making said order respondent acted in violation of Section 8, Article I, of the Constitution of the United States and of the laws of the United States relating to the regulation of commerce among the several States.

Petitioners further state that thereafter, to-wit, on the 8th

25 day of July, 1915, petitioners' motion for rehearing was in all things by respondent overruled and denied.

Petitioners further state that in assuming jurisdiction in the premises and in the proceedings held in connection therewith respondent has been and is acting unlawfully, unjustly, unreasonably and in excess of its powers and in violation of the provisions of the Constitution and laws of the United States aforesaid, and in excess of the authority in it vested by said Public Service Commission Act. Petitioners further state that this application for a writ of review herein is made within thirty (30) days after petitioners' said application for rehearing was overruled and denied by respondent.

Wherefore, petitioners pray that a writ of review, as provided for in Section III of the Public Service Commission Act, be granted petitioners herein directed against respondent herein and returnable not later than thirty (30) days after the date of the issuance thereof, and that this Court by said writ direct respondent to certify to this Court its record in this cause and that upon the return day thereof this cause be heard by this Court and a judgment entered herein setting aside and reversing the aforesaid order made and entered by

respondent, and that petitioners be granted such other and further relief as to the Court may seem meet and proper.

Upon the filing of said petition and on said 28th day of July, 1915, a writ of review was issued by the clerk of said Circuit Court directing respondent to file in said Circuit Court on August 26, 1915, the petition and record in said cause, with all the proceedings pertaining thereto on file with respondent.

In obedience to said writ of review, respondent duly certified to said Circuit Court of Cole County, Missouri, and on or before the return day of said writ the complete record of respondent in said cause, and the same was thereupon duly filed in said Circuit Court and became a part of the records thereof.

Trial.

On September 24, 1915, during the June Term, 1915, of said Circuit Court of Cole County, Missouri, this cause came on regularly for trial in said Court before the Honorable John G. Slate, Judge thereof, without a jury, appellants and respondent duly appearing by their respective counsel, and said cause was on said date and at said term duly submitted upon the pleadings and the original transcript of the record, testimony and exhibits of respondent, as aforesaid. Said cause was at the day and term last aforesaid taken under advisement by said Court and duly continued to the regular November Term, 1915, of said Court under advisement. All of said matters and things are shown by orders of record of said Court.

Judgment.

Afterward, on November 15, 1915, and during the said regular November Term, 1915, of said Court, said Court entered judgment affirming the order of respondent, to-wit, the order of the Public Service Commission of the State of Missouri entered in said case of W. D. Byrd et al. against these appellants, the judgment being duly entered of record on the date and at the term last aforesaid. The order of respondent as affirmed by said Court is hereinafter set forth.

Motions for New Trial and in Arrest of Judgment Filed.

Afterward, to-wit, on the 16th day of November, 1915, and during said November Term, and within four days after judgment, appellants filed their motion for a new trial and their motion in arrest of judgment in said cause, as shown by orders of record then and there entered in said Court.

Motions for New Trial and in Arrest of Judgment Overruled.

Afterward, and on said 16th day of November, 1915, and during said November Term, said motions for a new trial and in arrest of

judgment were, by consent of the parties, taken up, considered and heard and the Court, on the same day and during the term aforesaid by orders then and there entered of record, overruled said motion for a new trial and said motion in arrest of judgment.

Bill of Exceptions Filed.

Afterward, and on said 16th day of November, 1915, and during said term, appellants duly presented to said Court their bill of exceptions in said cause and the same was, on the day and at the term last aforesaid, duly approved, signed, sealed and ordered filed and made a part of the record in said cause, and the same was thereupon and on the day and at the term last aforesaid filed in said Court and made a part of the record therein, as shown by orders of record then and there entered in the cause, as well as the file mark of the clerk endorsed on said bill of exceptions.

Appeal Granted.

On the day and at the term last aforesaid appellants filed their affidavit and bond for an appeal in said cause to the Supreme Court of Missouri; whereupon, by orders duly made and entered of record on said day and at said term an appeal was granted appellants to the Supreme Court of Missouri and appellants' appeal bond was duly approved and filed.

Transcript Filed.

Afterward and on December 11, 1915, and more than fifteen days before the regular April Term, 1916, of the Supreme Court of Missouri, appellants filed in the office of the clerk of the Supreme Court of Missouri a duly certified copy of the record entry of the judgment appealed from in the cause, showing the date, term and day of the term upon which same was rendered, together with the order granting an appeal, and on said date also caused to be filed in the office of the clerk of said Supreme Court the original transcript of the record and testimony and exhibits certified to by respondent and filed in said Circuit Court of Cole County, Missouri.

The complaint in the case of Byrd et al. against appellants filed with respondent is as follows, caption and signatures omitted:

29

Complaint.

Petition for the Restoration of Passenger Train Service at Caruthersville.

Complainants would respectfully state and show that W. D. Byrd as Mayor, and each of the other above-named complainants, as Aldermen, are the lawful and proper persons to here complain for and

in behalf of the City of Caruthersville, which is a municipal corporation of Pemiscot County, in this State, they and each of them composing the legislative body of said city.

Complainants would further respectfully state and show that defendants J. W. Lusk, W. C. Nixon and W. B. Biddle are the legally appointed, qualified and acting receivers of the defendant railroad company and have a residence in the City of St. Louis, in this State.

Complainants, for their meritorious grievance in this cause, would respectfully state and show that the defendant railroad company, through its receivers above mentioned and the officers, servants and employes of said railroad company, are operating a line of railway in this State, several branches of which pass near and through the City of Caruthersville, Missouri. The basis and purpose of this complaint, therefore, is to evidence and show to this Honorable Commission that said defendants, their agents and servants are doing great injury to the inhabitants of the complainant city by reason of the changes in its schedule of passenger trains, which said changes, recently made, results in a direct detriment to complainants because it unjustly discriminates against said city.

Complainants would respectfully state and show that the City of Caruthersville is a prosperous little city with a resident citizenship of more than 5,000 thrifty citizens and that it is surrounded by a fertile farming country. Besides its railroad facilities of transportation, the Mississippi River runs along its eastern border. Because its merchants and other business men have, for good business reasons, patronized steamboat common carriers of freight and passengers, said receivers of defendant, together with the traffic agents of defendant company, have made certain changes in their passenger schedule which makes it very inconvenient for shoppers and other persons who have contributed to the growth and upbuilding of Caruthersville to get in and out of said city at convenient times, as they were previously permitted to do by reason of the reasonable schedules of the defendants' passenger trains, which said conduct on the part of the defendants is the direct intention to damage this city to the gain of other towns along the line of their railroad, which has no other means of transportation except that furnished by defendant.

Therefore, representing the city as a whole, these complainants respectfully state and charge that the defendants, when they discontinued the former service had and allowed by trains 801 and 802, which are the day trains, and only ones, between St. Louis and Memphis, and denied the City of Caruthersville the use and benefit of said trains by not running them by and through said city, intentionally injured said complainants, from which unjust act the city and community has and is now greatly suffering.

And complainants stand ready to establish that there was no meritorious reason for such change of schedule and avers that the same, as originally inaugurated, resulted in profit to defendant company.

Complainants further charge that said defendants, in changing

the schedule of its local trains from Kennett to Memphis has caused a direct injury to said city as well as to other neighboring towns, and that said change has not directly benefited the defendants. The service now being had with this train makes traffic between Kennett, Caruthersville and other towns along the line of defendant very inconvenient with Memphis. Many unnecessary layovers and changes have resulted therefrom, so that the traffic has been cut at least half on this line.

And complainants charge that said change was not made for the purpose of reducing expenses, but to change the methods of transportation so as to favor defendant to the damage of complainant and others.

Complainants further say that defendants, in open violation of all recognized rules of safety, are operating passenger trains between Hayti and Caruthersville by backing said trains into Caruthersville, which not only endangers the lives of its passengers, but all persons crossing the right-of-way at public crossings between said cities.

Wherefore, to the end of obtaining substantial and merited relief, complainants file this complaint and pray the Commission to order defendants to restore the former schedule or to cause one to be made as good, running trains 801 and 802 through said city of Caruthersville; that the schedule of the local train between Kennett and Memphis, via Caruthersville, be restored and that an order be made

32 prohibiting the backing of any and all passenger trains in and out of Caruthersville. And complainants pray for all such other and further relief to which complainants may show themselves entitled on the hearing of this complaint.

The answer of defendant St. Louis and San Francisco Railroad Company to said complaint, omitting caption and signatures, is as follows:

Separate Answer of Defendant St. Louis and San Francisco Railroad Company.

The above-named defendant comes now and, answering the complaint filed herein, states:

That on or about May 27th, 1913, the railroad and properties of said defendant were placed in the hands of receivers, duly appointed and qualified by the United States District Court for the Eastern Division of the Eastern District of Missouri, and that from and since that date receivers appointed by said Court have been, and defendant receivers are now, in the full and exclusive possession of the railroad and properties of this defendant and operating the same under and pursuant to the authority and direction of said Court.

Wherefore, having fully answered, said defendant prays that the complaint be dismissed as to said defendant and that said defendant be discharged with its cost.

The answer of Lusk et al., Receivers, to said complaint, caption and signatures omitted, is as follows:

Separate Answer of Receivers.

Come now the above-named defendant receivers and for their separate answer to the above complaint, state:

33 Said defendants admit that they are the legally appointed, qualified and acting receivers of the railroad and properties of their co-defendant.

Said defendants admit that as such receivers they are operating lines of railway in this State, a portion of which passes near and through the City of Caruthersville, Missouri, but deny that they are doing great injury to the inhabitants of said city by reason of any changes in the schedule of passenger trains.

Said defendants deny that they have made certain changes in their passenger schedule to the inconvenience of shoppers and other persons arriving at and departing from said city, and deny that they have made changes in their passenger schedule with the direct intention of damaging said city or otherwise.

Defendants admit that in the month of August, 1913, the operation of trains 801 and 802 of defendants was discontinued by way of said city, but deny that said defendants intentionally injured said city by reason of the discontinuance of such operation, and deny that the former operation of said trains resulted in profit to defendants.

Defendants deny that they have caused direct injury to said city as well as to other neighboring towns, by changing the schedule of their local train from Kennett, Missouri, to Memphis, Tennessee, and aver that whatever change was made in the schedule of said train was made for the purpose of reducing expenses of defendant.

Said defendants further deny that in open violation of all recognized rules of safety they are operating passenger trains between Hayti and Caruthersville, Missouri, by backing said trains into Caruthersville.

Further answering, said defendants state that said trains 34 801 and 802 are interstate trains operating between the City of Saint Louis, Missouri, and the City of Memphis, Tennessee, and that it was necessary for the operation of said trains by way of said City of Caruthersville to be discontinued in order to maintain connections at Saint Louis and Memphis.

Further answering, said defendants state that whatever changes have been made in the schedule and manner of operation of their trains have been caused by the necessity of defendants to reduce their operating expenses, and that defendants have at all times endeavored to afford said City of Caruthersville reasonable passenger facilities; that defendants' entire passenger business in the State of Missouri during the fiscal year ending June 30th, 1914, did not yield to defendants sufficient revenue to equal the reasonable expenses of operating such traffic and such condition still continues.

Wherefore, having fully answered, said defendants ask that said complaint be dismissed, and that they be discharged with their costs.

The bill of exceptions filed in said cause, omitting caption and stating portions of the testimony in narrative form, is as follows:

Plaintiffs' Bill of Exceptions.

Be It Remembered, That heretofore, to-wit, on the 24th day of September, 1915, this cause came on for hearing in the Circuit Court of Cole County during the June Term, 1915, of said Court, before the Honorable John G. Slate, Judge thereof, and the following proceedings were had:

Appearances:

E. T. Miller, for plaintiffs,
William G. Busby and A. Z. Patterson, for defendant.

The cause was duly submitted on the day and at the term last aforesaid upon the pleadings and the original transcript of the record, testimony and exhibits in the case of W. D. Byrd et al v. James W. Lusk et al., duly certified to this Court by The Public Service Commission of the State of Missouri, and filed and made a part of the record herein, the same being filed in this Court pursuant to and in compliance with the writ of review heretofore issued herein, directed to said Public Service Commission of the State of Missouri. Said pleadings and original transcript of the record, testimony and exhibits and said certificate thereto being as follows:

The complaint filed before the respondent and the separate answers of the Railroad Company and the Receivers here called for in the bill of exceptions are hereinbefore set out in this abstract.

Proceedings and Evidence Before the Respondent.

(Caption Omitted.)

Appearances:

Vance J. Higgs, for complainant,
M. Whybark and A. P. Stewart, for defendants.

Proceedings.

Mr. Higgs: The charge we hope to substantiate in this case, your Honor, is that this is the Third District of Missouri, I believe this is so designated, the Third District, composing 605 to 700 miles of railway, and Caruthersville is the second town in point of shipping of any other point on this division, but taking from this the amount of goods shipped, the passenger traffic is the third town so far as the Frisco Railroad is concerned; that there is paid into the local office of the Frisco Railroad here more than \$265,000 per year; that the passenger service as now given this town by the Frisco is grossly inadequate, and we think this town is being discriminated against by the Frisco System, and the passenger service that we now have, when compared with the passenger service we had six years

ago, when less business was being done here, is not as good as it was six years ago; any effort the Frisco Railroad has made in the past six or eight years has been to lessen the efficiency of its passenger service. Our specific complaint on train service is the service we now have to Memphis and St. Louis. The one main line that we have connection with is made here at Hayti, possibly six miles, and we are insisting trains 801 and 802 should be run by here, and that the present policy of the company is neither saving money or giving this town the service to which it is entitled. I am after train 801 and 802 and the train that leaves Hayti in the morning and backles up four or five times, and finally gets into Memphis after making some connection near Big Creek.

Commissioner Bean: That is another train?

Mr. Whybark: That is another train. I will state here that that train is an interstate train, that train running from Hayti to Big Creek is an interstate train, and this court could have no jurisdiction over what took place outside of the State of Missouri.

Mr. Higgs: Well, 801 and 802 is an interstate train, too.

Mr. Whybark: We will make the same objection to that; I don't know whether that amounts to anything.

Mr. Higgs: We are insisting on it, so far as the schedule in this State is concerned controls that.

H. HIGHFILL, being sworn, testified as follows:

I am in the oil and mill business, and am also in the gin and mercantile business, and have traveled over this section of the State nearly all my life.

Q. I will ask you to state to the Commission what kind of train service we now have from here to Memphis, Tenn., or points south on the morning train.

A. Well, our service from here to Memphis in the morning, you would have to leave here at 5:10 on a train that is made up at Hayti, I believe it is called the accommodation, and goes from here to Big Creek, we used to call it Turrell, and lays over there and we are carried on into Memphis on another train.

Mr. Whybark: Just a minute till I put in my objection; I make this formal objection to anything that takes place outside of Missouri; this Commission has nothing to do with it.

Commissioner Bean: Proceed with your testimony.

Mr. Whybark: So I get my objection in.

Mr. Higgs:

Q. How does the train that we now have from Hayti to Memphis compare with the former train service of this company leaving Hayti and going direct to Memphis?

Commissioner Bean: What is the number of this train?

Mr. Higgs: 821.

A. Well, in former years, I think only two or three years ago, this accommodation train was made up in Kennett, Mo., and stayed all night at Kennett and then run through to Memphis, went all the way.

Q. I will ask you to state whether or not it made approximately the same time from Kennett to Memphis as it now takes to go from Hayti to Memphis?

A. Well, I don't remember the time well enough to make a positive statement on that, but the best I remember, we arrived in Memphis earlier then than we do now.

Q. How does this train, that is the equipment and the coaches, as to cleanliness compare with other roads in this immediate section of the country?

A. As we all know it is not a first-class train, the one we call the accommodation; the coaches are usually in bad condition, and they are old property, I suppose.

Q. And as to cleanliness?

A. It is never the cleanest in the world; it is nothing to compare with the train that goes from Hayti to Memphis on the main line, there is no diner and no parlor car.

Q. And the coaches they have in use, what condition are they in?

A. They are in bad condition.

Q. Now, state to the Commission our service in getting in and out of Caruthersville or to catch the main line and the day trains 801 and 802?

A. Well, we haven't any way to get this morning train south on the main line. The only way to get from here to Memphis in the early morning is to go on this accommodation train or drive
39 from here to Hayti to get that 801 or 802, whatever it is goes through Hayti about 5:00 o'clock; and from here to Memphis during the day we have to leave here at 3:25 on what we call Ham's train and go over to Hayti and wait there for this 801 and 802, which leaves Hayti at 4:10 I believe.

Commissioner Bean: What time do you leave here?

A. 3:25, I believe is the time, 3:25 or 3:30, somewhere along there.

Q. State to the Commission how this Ham's train, as you call it, goes backwards and forwards to make connections with these trains.

A. Well, this Ham's train is made up at Campbell and leaves Campbell in the morning at 6 o'clock and comes down to Leachville and back to Kennett and arrives at Caruthersville at 11:10 or 11:20, something like that, then they go back to Hayti and wait for this 801 or 802 that comes out of Memphis.

Commissioner Bean: Odd or even numbers northbound?

A. Even numbers northbound. 802, they wait for that and bring the passengers off of 802 over to Caruthersville and leave here then at 12:20 and go to Kennett.

Q. Now, then, to make this train, I mean 802, it necessitates the running of a train to Caruthersville, takes it from Hayti to Caruthers-

vile, then to take the passengers back to Hayti and then to bring the train back into Caruthersville to bring the passengers here?

Q. And go out again?

A. That is what I was going to come to; after they get in here about 3 o'clock from Kennett they go to Hayti and wait for this 801 south and come back to Caruthersville and then leave Caruthersville again at 4:40 or 4:50 and go on over to Kennett and back down to Senath and up to Campbell.

40 Commissioner Bean: That is the service now?

A. Yes, sir.

Mr. Higgs:

Q. Mr. Highfill, I will ask you to state if you traveled on 801 and 802 when it came through Caruthersville?

A. Yes, sir.

Q. What is the service now, that is, the present service we have so far as comfort and convenience, how does it compare with the service when 801 and 802 came through?

A. The comforts we have now is nothing to compare with what we had then; we have an entirely different train, besides we have to wait over at Hayti, have to change trains.

Q. I will ask you to state whether or not you consider the service being given here, taking into consideration the size of the town, the number of passengers—

Commissioner Bean: What is the size of the town, you better get that in the record.

Mr. Higgs:

Q. What is the size of Caruthersville?

A. I couldn't say. I have been told somewhere around 6,000.

Q. Well I will ask you to state, taking into consideration the size of the town, the amount of business done here and the passengers hauled, how does this service that we are now having compare with other towns of similar size in this section of the State?

A. Well, I think we have the poorest service here of any town south of Cape Girardeau in size.

The train running from Hayti to Memphis is unclean compared with the train running from St. Louis to Memphis; the cars are old-fashioned and have no vestibules, and are of the same type that were in use years ago; they were the only kind we have had; they are just like an old worn-out house, and I guess it would be impossible to clean them unless you rebuild them; the seats are torn and broken. The train I am talking about runs from Hayti to Turrell, Arkansas. When you arrive at Big Creek you change cars to the other line to go into Memphis, the train on the other line has vestibule cars and is a better train than the one we have from here down there; I don't ride on that train more than a

dozen times a year because when I have trips to make to Memphis I travel on the other train to Hayti. The train running from Kennett to Caruthersville and Campbell, known as Ham's train, makes connection with the trains going south and north to Memphis and St. Louis; Ham's train starts at Campbell, runs to Kennett, then down to Senath and Leachville, Arkansas, then comes back to Kennett and over to Hayti, thence to Caruthersville, then makes connection with the trains going north and south to St. Louis and Memphis; the cars in Ham's train are old-fashioned, but I suppose they are strong enough.

Q. Now, you are talking of train service from here to Memphis to be an up-to-date present-time service, are you not?

A. How is that?

Q. You are talking of train service from here to Memphis, in your estimation ought to be up-to-date?

A. Operating it with 801.

Q. 801 and 802?

A. Yes, sir.

Q. 801 and 802, that is the one that goes north and south?

A. Yes, sir.

Q. You don't think they compare?

A. No, sir, I don't.

I think Ham's train and the through train to Big Creek are about the worst I find as to dirt.

Commissioner Bean:

Q. How long has this service been in effect, this train from Hayti to a point in Arkansas, Turrell?

A. I believe that has been changed twice in the last year or two.

Q. Do you object to the time upon which that train is operated, what is your objection to that service?

A. Well, our objection is having to ride this local train from here to Memphis.

Q. What was the service before that train was put on?

A. This 801 and 802 through here came through Caruthersville.

Q. You relied on that train for this service then?

A. Yes, sir.

Q. That train would really satisfy you, would it, the service of that train if it was restored to what it was before?

A. Yes, sir; 801 and 802 through here; we would be satisfied with that service to Memphis.

Q. Can you state when this train was put on from Hayti to Turrell?

A. I believe the last change was made December 1st; they had been running it through to Memphis.

Q. What is the volume of the passenger traffic from here to Memphis accommodated by that train?

A. I couldn't say about that; I suppose they have some records that would show that.

Q. How far is Hayti from Caruthersville?

A. Eight miles, I think, by rail; the fare is sixteen cents.

Q. This 801 and 801, how do they run now, different from what it was before?

A. They go down what they call the main line over here.

Q. You had better make an explanation of that now; we want to get that in the record.

Mr. Higgs: I thought we would get that with the map.

Mr. Higgs:

Q. When you say you mean 801 and 802 you also mean
43 the restoration of the service as it used to be from Kennett to Memphis, that is the early morning train?

A. From Kennett to Memphis?

Q. Yes, from Hayti to Memphis direct?

A. Well, I don't know about this service from Kennett to Memphis or to Turrell would benefit us or help us to Memphis any more than starting from Hayti.

Q. You mean, if the main line went through like it used to and get into Memphis two hours earlier or an hour and a half earlier would be of some benefit to the town than now?

A. Yes, sir.

Q. A person going to Memphis wouldn't be forced to go one day and come back the next to attend to business?

A. No, sir.

Q. Now, then, from Hayti you say 801 and 802 goes straight down the line?

A. No, it goes—I don't know whether it goes straight or not, it goes this other line, goes around Caruthersville.

Q. Goes around Caruthersville?

A. Where this Caruthersville branch strikes Grassy Bayou.

Q. How far is Grassy Bayou south of Caruthersville?

A. I couldn't say how far that is, because we never buy a ticket to or from Grassy Bayou, that is the only way I have to tell.

Commissioner Bean:

Q.) How long has it been since the service changed as to the way 801 and 802 operated?

A. It has been over a year, I think, something like eighteen months, the best I remember.

Mr. Higgs:

(Q.) It used to get in here, this train coming back from Memphis, when it run direct between Hayti and Caruthersville, a little after 9 o'clock?

A. Somewhere around that.

Q. Now, it is after 11 o'clock when you get in?

A. On the accommodation?

44 Q. Yes, sir.

A. I believe they are due at 11. They are usually late.

Mr. Whybark:

(Q.) That is the accommodation you spoke of?

A. Yes, sir.

Q. And not train 801 and 802 you are making complaint about?

A. If we tried to get to Caruthersville on 801 and 802 out of Memphis, we wouldn't get here until the next day at noon; we would have to come to Hayti and stay all night.

Mr. Higgs:

(Q.) You stated a while ago you never go to Memphis unless you have to, I mean on that train?

A. Yes, sir.

Q. I will ask you to state what has been the fact from your observation of traffic on that train since the change has been made between Caruthersville and Memphis as to falling off?

A. Everybody is the same way as myself; they wouldn't go unless they had to.

Mr. Whybark:

(Q.) You spoke about coming up on 802 to Hayti and having to wait until next morning to get connection?

A. Yes, sir; come up on 802.

Q. And get direct connection to Hayti with Caruthersville?

A. No, sir; coming up on 802 you arrive at Hayti at 12:30 at night.

Q. That is 806?

A. Well, whatever it is out of Memphis, you get there at 12:30 and have got to stay over there and come home on this 5 o'clock train next morning or at noon the next day.

Q. You are not making any complaint about that train in this charge?

A. I am complaining just the same of this St. Louis and Memphis train; I want to pass through Caruthersville.

Q. I understood you to say 801 and 802, the day train, wasn't satisfactory?

A. That wasn't my understanding; I mean the passenger trains.

45 Q. You mean all the trains?

A. Yes, sir.

Q. How many trains are running from St. Louis to Memphis?

A. Well, the trains——

Q. I mean straight through from St. Louis to Memphis.

A. Well, we have a train south at 5 o'clock in the morning.

Q. Yes?

A. We have a train north at 11 something.

Q. In the day time?

A. In the day time, and they have a train south at 4 something.

Q. Yes?

A. And a train north at 12 o'clock at night.

Q. There are four trains?

A. That is four trains.

Q. Two north and two south?

A. That don't come by Caruthersville.

Q. You are complaining of all the train service?

A. Yes, sir.

Q. Did train 805 and 806 ever run this way?

A. I don't know about 805 and 806, but we had a train out of Memphis that arrived here, that is a regular passenger train that used to come through here at night.

Commissioner Bean: There is nothing in the complaint.

Mr. Higgs: It did run through; we are not complaining about that.

A. I am complaining about it; when I am in Memphis and want to come home I have to come to Hayti; I have to leave Memphis at 4 or 5 o'clock in the afternoon and then get here at 11 o'clock.

Mr. Whybark: That is a night train; you are making no complaint in this proceeding about the night train from Memphis to St. Louis.

Mr. Higgs: No, just 801 and 802; we will try to get a little at a time.

46 C. F. SCOGGIN, being duly sworn, testified as follows:

I live in Caruthersville, am assistant cashier of the People's Bank and am acquainted with the train service between Caruthersville and Memphis; I was over that road about the 7th of this month and consider the condition of the train both as to service and as to its coaches very poor. The seats are dusty, in fact, saturated with dirt. The morning I went down we were late, and got into Memphis about 11:15, laying over at Big Creek or Turrell about an hour; we left Turrell at 9:15.

Q. How does the train service we are now having compare with the former service of this company, when 801 and 802 were run through here?

A. Well, there is no comparison—yes, there is a comparison, too, but there is no doubt but what our train from here to Memphis, from here to the state line, you might say, is very poor; our service from here to Memphis in the morning is especially poor; there is no comparison between 801 and 802 because you pay the same money and take what you get; we get there when we get there, of course, the wheels turn and we get there some time, but there is no comparison between the train we have and the train that runs through Hayti now on the main line; it is a much better train; what I mean by that is, we have cleaner sets, we have a porter, you need one; there is no comparison at all; you pay the same money.

I go up and down the line, but I don't make the practice of traveling, though I am out of town several times a year, to St. Louis and

Memphis; probably go to Memphis twice a year and to St. Louis twice a year; most of the time I go back and forth on this train to Little River, hunting. Train 801 from St. Louis to Memphis leaves St. Louis at 8 o'clock in the morning, arrives at Hayti at 4 or 4:30 in the afternoon, then goes on to Memphis; that is the train that I want to come by Caruthersville. The delay at Turrell, that I spoke of, was caused by waiting for some other train; we don't change cars at Turrell, the car we are on goes through to Memphis. The distance from Hayti to Caruthersville is seven or eight miles; the train begins its run at Hayti, comes to Caruthersville, goes down the line to Turrell, and the only stations that I recall down to the state line on that run are Canady, Holland, Micola and Steele; it, of course, passes Grassy Bayou, but that is no station, it is merely the connection between the main line and the line from Caruthersville.

FRANK DILLMAN, being duly sworn, testified as follows:

I am a member of the Dillman Egg Case Company; have been in business in Caruthersville about six years; we ship out about 700 cars a year; I can't say what the freight charges are without referring to my books.

Q. I will ask you to state, Mr. Dillman, how does the service from Caruthersville over the Frisco Railroad compare with the service of three or four years ago; that is, the passenger service?

A. Well, I don't think it is hardly as convenient as it was three or four years ago.

Commissioner Bean:

Q. Why don't you prove what the service was then and what it is now?

Mr. Higgs: I don't know whether he knows.

Commissioner Bean: Haven't you some old time cards to show the service?

48 Mr. Higgs: No, I haven't.

Q. What is the inconvenience you feel should be remedied now?

A. It is inconvenient to go to Hayti and change cars for north and south transportation in the day time; at night there is no difference because we take the Pullman car.

Q. You mean you take the Pullman?

A. Yes, sir.

Q. How about the man that hasn't the money to take the Pullman?

A. I suppose it would be very inconvenient for him to change in the night.

Q. How is the service from here to Memphis?

A. The same thing applies to the morning service; we all object to getting out at that hour in the morning to take the train to Memphis.

Q. A man going to Memphis virtually has to go one day and come back the next to transact any business to amount to anything?

A. I couldn't say that in fairness; no. In the morning we leave here and go to Memphis and do our business and come back the same day it makes an extra long, hard day.

J. A. Riggs, being duly sworn, testified as follows:

Mr. Higgs:

Q. Mr. Riggs, you live in this city?

A. Yes, sir.

Q. I will ask you to state how the service we now have on the Frisco compares with the service of smaller towns in this section of the State.

A. Well, I think it is very poor myself.

Q. In what way? State to the Commission.

A. Well, especially in the through train service, the trunk line, getting out either from here to St. Louis or to Memphis.

49 Q. State to the Commission those inconveniences that you find.

A. Well, there is absolutely no way to get out of town but one train either to Memphis or St. Louis without changing cars; that is the morning train to Memphis.

Q. You have been on that morning train?

A. Yes, sir.

Q. State the inconvenience in going on that morning train.

A. You leave here at 5 o'clock in the morning if you want to do one day's business; you leave at 5 o'clock in the morning, and if the train is on time you get back at 11 o'clock at night; it is usually from thirty minutes to an hour late.

Q. Every day?

A. Every day; yes, sir.

Q. About what time do you get into Memphis if it is on time?

A. 11:10, I believe.

Q. How long do you have to lay over at Turrell?

A. I think it depends on whether that train is on time or not.

Q. The times you have been over there how long did you lay over?

A. Something—really, I don't know; I didn't pay any attention.

Q. Some time?

A. Yes; some time.

Q. Do you know the difference in the distance between Hayti and Grassy Bayou by what is known as the cutoff and between Hayti and Grassy Bayou via Caruthersville?

A. Something like—you mean the distance from here to Grassy Bayou and the distance from here to Grassy Bayou around by Hayti?

Q. Yes.

A. Something like ten miles.

I go to Memphis possibly three or four times a year, and in the last two months I have been to St. Louis three times; last year I was in St. Louis three or four times; possibly the same number of times at Memphis; I think the distance is nine miles from Caruthersville to Grassy Bayou and about seven miles to Hayti; I think the distance from Hayti to Grassy Bayou is about ten miles.

Mr. Higgs:

Q. Where is the most of the trading out of Caruthersville that comes into Caruthersville with reference to the section of the country?

Mr. Whybark: I object to that for the reason that has nothing to do with the through train service.

Commissioner Bean: Answer the question.

Mr. Higgs:

Q. Persons coming from the south end of the county to do trading at Caruthersville would first have to come to Hayti?

A. Yes, sir.

Q. And lay over in Hayti before coming to Caruthersville?

A. Yes, sir.

Q. I will ask you to state whether or not there has been a perceptible falling off of business in this town since the Frisco Railroad Company commenced to run their trains through Hayti in place of coming direct to Caruthersville, from your information.

A. From information I have gotten from merchants, it has; yes, sir.

There is a train runs from Blytheville, Arkansas, to Cape Girardeau called the "Bull Moose"; it is a regular passenger train; it passes through Caruthersville 7:15 in the morning going north and 7:05 in the evening going south; it comes to Hayti and around to Caruthersville; going south it is No. 825, and going north it is 823; it runs from Cape Girardeau to Blytheville, Arkansas, by way of Hayti and Caruthersville; going south it passes Caruthersville about 7:05 in the evening; going north it comes to Grassy Bayou and comes around to Caruthersville and Hayti and goes on to Cape Girardeau; it reaches Caruthersville about 7:15 in the morning; that train would bring all of the people from the south part of the county up to Caruthersville, but they have to come in in the morning; most of them, however, come on the noon train, then go back on the 3:30 train in the afternoon. If they don't have time for their business between noon and the 3:30 train they wait for the "Bull Moose"; I have been on that through train quite often, but I don't remember whether it was put in service a year or two years ago; it was put on since the change was made in not running No. 801 and 802 to St. Louis and Memphis via Caruthersville.

Q. Now, that is one train; now, then, comes the next train, arrives here from Kennett, doesn't it?

A. Yes, sir.

Q. Arrives here at 11 o'clock?

A. Yes, sir.

Q. By the way of Hayti and on here to Caruthersville?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. That comes here and then goes back to Hayti, doesn't it?

A. Yes, sir.

Q. And meets 802 going north?

A. Yes, sir.

Q. Doesn't it?

A. Yes, sir.

Q. Then it comes back to Caruthersville?

A. Yes, sir.

Q. And then it goes on west by the way of Hayti to Kenneth?

A. Yes, sir.

Q. Then comes back to Caruthersville?

A. Yes, sir.

Q. And then goes to Hayti?

A. Yes, sir.

Q. And meets 801, this train from St. Louis to Memphis?

A. Yes, sir.

Q. Then comes back to Caruthersville?

A. That is the schedule.

Q. Then goes on west to Kenneth and Senath?

A. Yes, sir.

Q. That is your train service, isn't it?

A. Yes, sir.

Q. Now, these trains going south, you can wait for the Bull Moose; the Bull Moose is 825; or you can go to Hayti and take, I think, 801 and go south?

A. Yes, sir; by changing at Hayti.

Q. That is southbound?

A. Yes, sir.

Q. For the northbound you can take 826 going north in the morning or you can wait until 11 o'clock and take 802; that is right, isn't it?

A. Yes, sir; you can do that; you have no way of getting through unless you change at Cape Girardeau from the Bull Moose or some other train from Hayti.

Q. That is all right; that is accommodation?

A. Yes, sir.

Q. You can pay the same fare and take the Bull Moose and go up to Cape Girardeau and then take the other train?

A. Yes, sir; you can change anywhere on the line if you want to.

Mr. Higgs:

Q. Mr. Riggs, your place of business is just below the depot?

A. Yes, sir.

Q. About how often do you see passenger trains coming in and out of there?

A. Well, you mean the turn-around and everything?

Q. Yes; the Bull Moose.

A. The Bull Moose?

Q. Yes.

A. Well, seven or eight times a day with the turn around to Kennett.

Q. State what the traffic on what is known as the Bull Moose compares with the turn-around from 801 and 802.

A. Well, it is real light unless they get you here in time for court when court is in session.

Q. I will ask you if it isn't a fact, unless we are holding
53 court here or something of the kind, if 801 and 802 is used almost entirely?

A. Yes, sir; to my knowledge, it is.

Q. Then, people who live out in the lower section of the country have to get up before day if they live any distance—Steele, Holland, Grassy Bayou, Micola—in time to catch that train?

A. Yes, sir.

Q. Therefore, they don't use it?

A. Not unless they have to.

Q. The train they do use goes into Hayti and they have to lay over there and come into Caruthersville?

A. Yes, sir.

Mr. Whybark:

Q. How large a town is Hayti?

A. Hayti, I judge, is 1,500.

Q. Now, in speaking about these trains, you don't mean the train that leaves in the morning for Kennett and goes down two or three times?

A. No; goes to Hayti and goes down?

Q. Yes; that goes south and passes here about what time?

A. Five o'clock in the morning.

Q. Five o'clock in the morning?

A. Yes, sir.

Mr. Higgs:

Q. State to the Commission as to what condition these coaches are in we have in here compared with the main line and other trains.

A. Very poor, to my knowledge.

Q. I am talking about the real condition of the coach as to filth or dirtiness of the coaches.

A. Well, I think they are not kept as clean as they should be kept. I have gotten on them at times when they had to turn the oil out of the lamps for some reason.

Mr. Whybark:

Q. How is that?

A. I say I have gotten on the coaches when they turned the lamps out for some reason; they didn't have coal oil in the lamps.

Q. You think they ought not have coal oil in the lamps?

A. I don't think they ought to turn them out when passengers are on there, when we need them.

Commissioner Bean:

Q. How many stops does 802 make between Hayti and the State line?

A. Two, I think it is.

Q. Where are those stops?

A. Steele and Holland.

Q. What about the amount of travel between those points and Caruthersville?

A. Well, practically all of the south end of the country is from those two points.

Q. What is the amount of the travel daily, the average daily?

A. Well, I couldn't say; I don't know.

Mr. Higgs:

Q. About how many people get off; that is, on an average, from 801 and 802, get off and on?

A. Off here?

Q. Yes, and on?

A. I never did count them.

Q. I will ask you if it isn't a fact the train stops here four or five minutes for people to get on and off?

A. Yes, sir.

Q. That is, most of the time?

A. Yes, sir.

Commissioner Bean:

Q. You won't undertake to state how many passengers, on an average, use these trains coming to Caruthersville, 801 and 802?

A. No, sir.

WARREN CROCKER, being sworn, testified as follows:

I am a drummer; spend about five-sevenths of my time traveling in this immediate section of the country on the Frisco Railroad.

Q. I will ask you to state to the Commission what is the condition of the train service in and out of Caruthersville; that is, as to the condition of the coaches and the accommodations on what is known as the Memphis train and this turn-around.

A. Well, if we want to take 802, the train going north, we have to leave here an hour earlier than we would if that train came

through here. Going south, we have to leave here an hour earlier but we lose an hour over at Hayti. Going from here to Hayti to go south, we leave here when the train comes north around through Grassy Bayou.

Q. Now, then, going on this Memphis train, what is the condition of the coaches going south, as well as the service in traveling as to cleanliness?

A. I would call it very poor.

Q. State to the Commission what you find, what condition you find.

A. Of course, it is just about as bad as they could run to put passengers in; that is what I would consider it.

Q. Mr. Crocker, you used to be in the mercantile business here; rather, connected with the Ward-Coppage Mercantile Company?

A. Yes, sir.

Q. You are well acquainted with the conditions in this country?

A. Yes, sir.

Q. I will ask you what per cent of the people who come into Caruthersville from this county come from the south end, what is known as the south end; in other words, have to go south on the Frisco Railroad.

A. What per cent?

Q. The people that come into the town.

A. Well—

Q. Do more people come from the south end or the north end?

A. More from the south end to do business; there is very little business from the north end of the county.

Q. From your experience in selling groceries to merchants, state what effect the taking off of 801 and 802, or rather running 801 and 802 through Hayti before it reaches Caruthersville, what
56 effect has it had on the business of this town; that is, the mercantile business?

A. I couldn't say.

Q. I say, from what the merchants have told you as to decreasing their business.

A. It has decreased the business; the trade that comes up on that train stops at Hayti and does their trading that would come here.

Q. I will ask you to state whether there are any other shipping facilities out of Hayti with the exception of the Frisco.

A. No, sir.

Q. There is out of Caruthersville the Lee Line?

A. Yes, sir.

Q. That is being used quite a good deal since these changes have been made?

A. Yes, sir.

Commissioner Bean: That is the line of boats?

Mr. Higgs: The line of boats; yes, sir.

Q. How far is it from Steel to Caruthersville?

A. Fifteen miles—fifteen and one-half miles; they charge for sixteen miles.

Q. If you get on that noon train at Steele, what time do you get on there?

A. The noon train?

Q. Yes, 802?

A. 802; I think it is 11:05.

Q. What time do you get into Caruthersville?

A. 12:15.

Q. 12:15?

A. No, no; it is about 12 o'clock; I couldn't say, now; we get into Caruthersville coming around by Hayti——

Q. That is what I am talking about.

A. We get into Caruthersville at 12:15.

Q. 12:15 or 12:25?

A. 12:15, or 12:20, I think.

Q. That is how many miles?

A. From Steele to Caruthersville?

Q. Yes.

A. Fifteen and one-half miles; the railroad charges for sixteen miles.

34 Mr. Whybark:

Q. Let me ask you a question, Mr. Crocker. Now, from Hayti the road runs straight across to Grassy Bayou, doesn't it, and then there is another road comes from Hayti around here to Grassy Bayou; that right?

A. Yes, sir; the road runs from Hayti to Grassy Bayou.

Q. That road runs from Hayti by the way of Caruthersville to Grassy Bayou also?

A. Yes, sir.

Q. Well, what is the distance from Hayti to Grassy Bayou by that line?

A. Well, I don't know; I was told it is six miles from Grassy Bayou to Hayti and fifteen miles from Grassy Bayou around through Caruthersville to Hayti.

Q. Nine miles longer?

A. Yes, sir; that is what I have been told; I never surveyed it.

Q. How long have you lived in Caruthersville?

A. Twenty-seven years, I guess; 1889——

Q. You have lived here long enough for me to get what information I want. Now, when the road was built to Memphis, at Hayti, that was built from there on down to Grassy Bayou as a cutoff, wasn't it, to make the distance nearer from St. Louis to Memphis, wasn't it?

A. That is what I understood; yes, sir.

Q. This road from Hayti to Caruthersville was already constructed?

A. Yes, sir.

Commissioner Bean: When was the cutoff built?

Mr. Whybark: That was built when they built the road——

Q. When was the cutoff built?

A. It was built about 1902 or 3; somewhere along there.

Q. It was generally known they would run through trains that way?

A. It was generally known by Caruthersville people they were building that cutoff to pull heavy freight over; they couldn't get them around this curve, but they never expected to pull the passengers off; they built the cutoff to pull heavy freights over.

Q. That was done before 1902, you say?

A. It was done somewhere along about that time, the best I remember.

Mr. Higgs:

Q. I will ask you if it isn't a fact that every representative of the Frisco Railroad that ever made a public statement in this town said there wouldn't be any change in the passenger trains?

A. Yes, sir.

Q. But would be for freight, and freight only?

A. It was; they had it here; they wanted to straighten out this curve and run the road around the back part of the town, so to speak, and we objected to the depot being put back there; they said they would build this cutoff down there to pull freight over.

Q. I will ask you about how many times you are in Hayti a month, coming to Caruthersville or going out on 801 and 802.

A. About—

Q. About how many times a month are you in Hayti, either getting off of 801 and 802 or going through Hayti, making the Hayti-Caruthersville connection?

A. I couldn't say; sometimes I am down there three or four times a day.

Q. I am talking about 801 and 802.

A. For my territory I use the train we term the Bull Moose; I use that a good deal; I don't use 801 and 802 very much.

Q. How many times are you there?

A. I judge I am there fifteen or twenty times a month.

Q. I will ask you, out of that fifteen or twenty times a month how many times out of that time, to the best of your recollection, does either the main line train have to wait for Ham's train or Ham's train have to wait for the main line train at Hayti?

A. Well, lately the travel has been very light; generally speaking, business has all been light, and the trains have been pretty well on time and haven't had to wait much lately.

Q. During the holidays, before the first of the year, how many times was it?

A. Well, it was quite a few times.

Commissioner Bean:

Q. How many people, on an average daily, take passage on 802, northbound?

A. Well, it would be hard to say, but there are a number of people.

Q. How many?

A. How many daily?

Q. On an average, if you know?

A. I would say twenty-five.

Q. Where are they bound to?

A. All up the line.

Q. To points north of Hayti?

A. To points north of Hayti.

Q. What is the difference to persons desiring to take that route now and heretofore?

A. Well, going north isn't so bad as going south.

Q. Just answer the question.

A. The train we got to travel on to get out of here and then change at Hayti.

Q. You have to leave here earlier?

A. Leave here going north?

Q. Yes.

A. On that train we wouldn't leave any different; that train leaves at 11:15.

Q. I thought you said it was an hour earlier?

A. I said—I changed it—on the evening train we have to leave an hour earlier, on the evening train going south; I changed that; I did say that on the start, but going north of here we get out of here with the schedule time; going north we get out of here on 802 at the same time we had.

Q. You change cars at Hayti?

A. Change cars at Hayti going north; going south we have to leave an hour earlier.

Q. How long do you wait there, under the present schedule, at Hayti?

A. At the present time, we don't have to wait; the train is generally there; the other train backs in and pulls up and the other train runs in; of course, there are times we have to wait.

Q. Now, about the night service, what is the difference between the night service coming north?

A. Well, there is no difference in the night service; we have never had 805 and 806 through here.

Q. You have always had to change cars going north at night?

A. We never had 805 and 806, to my knowledge; they have never run through Caruthersville.

Mr. Higgs:

Q. Those turn-arounds required to make the connection between Hayti and Caruthersville to accommodate people going to and from 801 and 802 has to make thirty-two miles each day, don't it?

A. Yes, sir.

Q. More than they would if the trains come through here?

A. Yes, sir.

B. F. BAY, being duly sworn, testified as follows:

Mr. Higgs:

Q. Mr. Bay, you are a traveling salesman?

A. Yes, sir.

Q. How long have you been acquainted and located in this town?

A. About twelve years.

Q. I will ask you to state where your territory is with reference to this city.

A. Well, from Cape Girardeau down to Marked Tree, Arkansas.

Q. You frequently go through Hayti?

A. Yes, sir.

61 Q. I will ask you to state about how often, in making connection from Caruthersville to Hayti, do you find either 801 and 802 having to wait on Ham's train or Ham's train wait on 801 and 802?

A. About how often?

Q. What part of the time?

A. Well, I couldn't say about that; sometimes you have got to wait thirty minutes for it, but most of the time they are about on time.

Q. Well, what inconvenience do you find with the present service compared with the former service when 801 and 802 came through here?

A. Well, sir, I don't think the service is quite as good on account of we don't get any dining car service or anything like that.

Q. You have to leave Caruthersville, if you are going to Memphis on the afternoon train, you have to leave Caruthersville about an hour earlier, do you not?

A. Yes, sir.

Q. What is the difference in the service from Hayti to Memphis now and just prior to the change?

A. I didn't get that.

Q. I say, what is the difference in the service we are having now from Hayti to Memphis; that is, the local train to Memphis, and the former train we had running from Hayti and Kennett to Memphis as to the condition?

A. Well, we have to leave an hour earlier, I believe, and get in an hour later.

Q. Get in an hour later?

A. Yes, sir.

Q. What is the condition of that train as to sanitation and cleanliness?

A. The chair car is very well, but what is known as the smoker don't look so well, of course, I usually ride in what is known as the chair car, the back coach, rather.

62 Q. What style cars are they?

A. Well, I suppose they are what you call old style.

Q. Now, Mr. Bay, from what the merchants you sell to say, state what has been the effect upon business in this town since 801 and 802 have been running through Hayti and not through Caruthersville; what effect has it had on business?

A. I couldn't say; only just what the merchants say.

Q. I mean what the merchants say.

A. They say it has cut some of their business off.

Q. From what end of the county do the people here derive most of their trade?

A. From the south end of the county.

Q. People coming to Caruthersville must first go to Hayti unless they take the early morning train and come in here?

A. Yes, sir.

Q. What train brings the most people into this town, the Bull Moose or 801 and 802?

A. Well, I think 802.

Commissioner Bean:

Q. People coming from the south would reach here at what time on 802, as it run formerly?

A. About 11:15.

Q. What time do they reach here now?

A. 7:25—oh, you refer to Ham's train—802?

Q. 802.

A. About 12:25.

G. W. SHAD, being duly sworn, testified as follows:

Mr. Higgs:

Q. Mr. Shad, you live in this town?

A. Yes, sir.

Q. How long have you lived here?

A. Nearly fifteen years.

Q. I will ask you how often you make the south end, the south part of the county, going over the Frisco?

A. Well, from ten to twenty times a month.

63 Q. Ten or twenty times a month; in that way do you get on 801 and 802 mostly?

A. Well, I go south on the early train and come back on the noon train or the night train.

Q. About what per cent of the time do you find either 801 and 802 waiting for Ham's train or Ham's train waiting for them at Hayti?

A. Why, before the first of the year I think the train coming north waited on Ham four times out of five.

Q. About how much time would it lose?

A. Well, if Ham had to coal up and take water and back around there, why, we would get in here about 12:40.

Q. 12:40?

A. Yes, sir.

Q. And then that main line train was delayed from twenty to twenty-five minutes on that account?

A. Yes, sir.

Q. Four times out of five?

A. Yes, sir; before the first of the year.

Q. I will ask you if it was occasioned by this backing up, as it used to do.

A. Yes, sir.

Q. I will ask you to state, Mr. Shad, what effect, in your opinion, has the taking off of 801 and 802 of coming through here had upon the business of this town, or, rather, the trade of this town, the merchants of this town, from people in the south end of the county; what effect has it had?

A. By what they tell me, it has hurt them.

Q. Quite a good deal?

A. Yes, sir.

Q. I will ask you if you were here when the main line of the Frisco Railroad, I mean when what is known as the main line of the Frisco Railroad, was put through?

A. Yes, sir.

Q. I will ask you what representations the officials of the Frisco Railroad made to the citizens of this town at that time.

64 A. They said those trains would never be taken off; the freight would be changed.

Mr. Whyback: We object to anything the Frisco officials then may have represented to this town when they built the cutoff.

Commissioner Bean: Objection overruled.

Mr. Higgs:

Q. They stated 801 and 802 wouldn't be taken off?

A. Wouldn't be taken off; no, sir.

Commissioner Bean:

Q. Who said that?

A. The Frisco officials, at that time.

Q. What officials?

A. Well, I don't know who they were; I couldn't state now.

FATHER SCHULTE, being duly sworn, testified as follows:

Mr. Higgs:

Q. You are the local priest of the Catholic Church?

A. Yes, sir.

Q. About how much traveling have you done on the Frisco Railroad within the last few years?

A. Well I usually travel quite a good deal, but on account of the train service and also on account of bad times I haven't been traveling very much of late.

Q. How does the service now, Father, compare with what it used to be before the cutoff was built, when we had the old service?

A. There is no doubt that the train service is not as good for the people as it was at that time.

Q. What effect is it having upon the merchants of the town and the trade from the south end of the county?

A. Well, I couldn't very well——

Q. From what they say?

A. I couldn't very well state that because I haven't had a great deal of intercourse on that subject.

65 Q. Well, Father, what inconvenience do you find in going north and south on the train we now have? State to the Commission the condition of the coaches we have there.

A. Well, of course, the coaches are not as nice and as convenient and as clean as is used on the main line; that is self-evident because the little trip into Caruthersville from Hayti is started just as a by-line, and not the main line.

R. F. COPPAGE being duly sworn, testified as follows:

Mr. Higgs:

(Q.) Mr. Coppage, you are a member of the Ward-Coppage Mercantile Company?

A. Yes, sir.

Q. I will ask you to state whether or not you travel quite a good deal over the Frisco Railroad, both north and south?

A. Yes, sir.

Q. State what the service is now, compared with the former service given by this same company.

A. Well, it isn't near as good as it used to be.

Q. Were you in business at the time this cut-off was put through here, Mr. Coppage?

A. Yes, sir.

Q. The same business you are in now?

A. Yes, sir.

Q. I will ask you what representations were made by the officials of the Frisco Railroad Company in different consultations had here with reference to this cut-off and what it would be used for?

A. Well, I didn't talk to any of the officials or hear any of them say a word about it, only it was understood by the people here in town that it was going to be used for heavy freights and that our through passengers would remain the same.

Q. Was that common talk on the street among all the business men here at the time as being the representation made by
66 the Frisco Railroad Company?

A. That is the way I understood it.

Q. I will ask you to state what effect upon the business from Caruthersville, that is, the merchants, has the taking off of 801 and 802 had here; has there been any perceptible change in business?

A. I think it has hurt business quite a good deal, and helped Hayti.

Q. Helped build up Hayti? There is no other road going through Hayti but the Frisco?

A. No, sir.

Q. State what condition the coaches are in between—I mean that run between Hayti and Caruthersville and from here to Memphis, what are their condition, Mr. Coppage, as to cleanliness?

A. Well, they are all old-style coaches, worn a good deal on account of the heavy travel they are used for; they are never very clean; I don't think that is due to the railroad company or the conductor or the porter, but it is the class that travels on there; the coaches are in bad order all the time.

Q. Mr. Coppage, I will ask you to state what is the inconvenience in going from here to Memphis now, compared with the former service when the train left Kennett in the morning or Hayti in the morning under the old schedule?

A. Well, it isn't near as good; we have to get up about half-past four in the morning in order to make the 5 o'clock train, and usually wait a while around Big Creek, whatever the name of that station is now—

Mr. Whybark: Turrell.

A. —Turrell; we usually wait there; this train is connected onto that other local train, which is practically the same kind of a train that we had, through to Memphis, then on this local train—I think that is a local train too—and we get into Memphis about 11 o'clock. When our local train run through, we left here
67 about 6, and I think we got in about 10:30, somewhere along there, and didn't have to change cars or be delayed at Turrell.

Commissioner Bean:

Q. How long ago was that?

A. I think that has been changed this last fall, that train.

Mr. Higgs:

(Q.) I will ask you to state what has been the effect of every change that has been made by the Frisco Railroad Company in their passenger service for the last two or three years with reference to this town as benefiting or hurting the traffic to and from Caruthersville?

A. It has been a disadvantage to our town with the exception of the Bull Moose train they put on; it comes in here so early from the south, people coming to trade don't use that train.

Q. What has been the effect of those same changes that have been made by the Frisco Railroad with reference to assisting or building up Hayti?

A. I think it has helped build up Hayti because it has threw all the people to come through Hayti.

Q. Before they reach Caruthersville?

A. Before they reach Caruthersville. When they come on that train they figure they don't have time to come to Caruthersville and maybe stop at Hayti; if we had the train like we had it before they would come to Caruthersville in place of Hayti, there is no doubt about that.

Mr. Whybark:

Q. Now, then, Mr. Coppage, when was 801 and 802 taken off of this road and put on the other?

A. I don't remember how long that has been, some time ago.

Q. About a year?

A. Something like that.

68 B. B. SANDERS, being duly sworn, testified as follows:

Mr. Higgs:

(Q.) How long have you been connected with business in Caruthersville?

A. Since 1900.

Q. You lived here at the time the Frisco proposed to build their cut-off or what is known as the cut-off?

A. Yes, sir.

Q. Do you know what statements and representations were made at the time they obtained their franchise or their right-of-way as to the train service in this town, and also as to what that cut-off would be used for?

A. My recollection is we were assured over and over again it wouldn't interfere with our regular passenger service.

Q. I will ask you if upon those representations the citizens of Caruthersville didn't aid the officials of the Frisco Railroad Company in procuring their right-of-way as between Hayti and Caruthersville?

A. That is my recollection.

Q. What has been the effect of all the changes that have been made by the Frisco Railroad since making those representations since the laying of their cut-off, as to changes, that is, the effect of their passenger schedule, the changes as to hurting the town?

A. It has made it more difficult for the people to get in and out of our town; I think it has decreased the abundance of the people from the southern end of the county by 50 per cent that come here to do business, had business transactions and patronizing the retail business.

Q. What is the condition of the trains that are run from here to Memphis, what is known as the turn-around?

A. I haven't been on that train but once in—I went to Memphis on that train in November, that was before the last change.

69 Q. What was the condition of it then?

A. It was dirty and disagreeable to travel on.

Mr. Whybark:

(Q.) Now, you spoke about when they built this cut-off over here from Hayti to Grassy Bayou, when was that done?

A. I can't recall the year, somewhere about 1903 or 1904.

Q. About the time of the construction of the road from St. Louis to Memphis, wasn't it?

A. Well, I don't remember the year the Frisco took this road

over, but I think they took it over about 1901 or 1900, the record will show that.

Q. At that time there was no train running from St. Louis to Memphis was there, when that was built?

A. When the cut-off was built?

Q. Sir?

A. When the cut-off was built?

Q. Yes.

A. Oh, my, I am sure there was.

Q. Isn't it a fact that there was no train running from St. Louis to Memphis until June 1, 1904?

A. I don't know of my own knowledge.

Q. Don't you know so, we had nothing but trains running to Cape Girardeau and had one train a day, wasn't it, and over at Kennett another train?

A. I know I went to Memphis in May, 1902, I am sure. I went two or three times a year; I think we changed at a station above Big Creek, Deckerville, changed to the main line.

Q. There was no through service then, was there, you had to make a change?

A. There wasn't at first.

Q. It was in that time they were building this cut-off, they were building the road?

A. I don't know, I should judge so.

Q. Now, isn't it a fact the first train that run from St. Louis to Memphis was a day train and went through on June 1, 1904?

A. I don't remember the dates; I know it must have had a starting point.

Mr. Higgins:

(Q.) Whatever that may have been, the starting point, the trains did go from here to St. Louis at the time that this cut-off was built, did they not?

A. Yes; I am sure of that.

Q. The representations to get the citizens to procure the right-of-way, to aid them in procuring the right-of-way, was there would be no change in the passenger service so far as the passenger trains going by the cut-off?

A. No; and my recollection is, we were promised through service from St. Louis to Memphis, as soon as they got the roadbed adjusted.

Q. This roadbed here?

A. Yes, sir.

FRANK J. CUNNINGHAM, being duly sworn, testified as follows:

Mr. Higgins:

(Q.) You are one of the Cunningham brothers that built and constructed the railroad running from here to the state line, are you not, or to Luxora?

A. Yes, sir.

Q. I will ask you to state how long you have been living in this section of this county?

A. Forty-seven years.

Q. You are now president of the Citizens' Trust Company?

A. Yes, sir.

Q. I will ask you to state what was the promise made by the Frisco Railroad Company to the people in this county at the time their right-of-way was procured for the cut-off, as to what trains should be run over the cut-off, as to the passenger and freight trains, from your information that you had at that time?

A. My information was that was built for the purpose of running their heavy freights through here.

71 Q. It is a fact citizens of Caruthersville, certain citizens of Caruthersville, upon that representation, aided and assisted them in procuring that right-of-way here?

A. It was largely donated by citizens of Caruthersville.

Q. Mr. Cunningham, state to the Commission the effect of all the changes that have been made by the Frisco Railroad Company, affecting their schedules, the last two or three years upon this town's business.

A. It has had the effect of inconveniencing the people living south and west of here and has been a great injury to the retail business of our town, also the wholesale business.

Q. Which is the most thickly populated and settled portion of the county, the south or north end?

A. The southern part.

Commissioner Bean:

(Q.) About what per cent of the trade at Caruthersville comes from the southern part of the county?

A. I judge about 75 per cent.

Mr. Higgs:

(Q.) The majority of that trade has to come through Hays before it comes here, if it comes on 801 and 802?

A. At the present time, yes, sir.

Mr. Whybark:

(Q.) They can come here on what is called the Hoff Mower?

A. Yes, sir; that train passes south of here so early, it is an inconvenience for the farmer to get up before day to catch that train; it makes them not use it in the winter months when they do heavy trading like they do in the summer time it is very convenient in the summer time.

Grubbsville; last month we sold a few less than 8,000, which may be less than the ordinary traffic per month in revenue, but not in the number of tickets; the larger portion of these passengers, probably sixty-five per cent, were destined to points in Missouri. The daily average travel for train 802 in the morning will run from fifteen to thirty passengers, usually bound to Portageville, Sikeston, St. Louis and Cape Girardeau, northbound and southbound; we sell more to Steele and Holland than Hayti for the southbound train; we will sell seventy-five tickets, on an average, or better, to points in this State daily; I don't know what the sales were to those points in the change in the trains, as I was not agent here then. The 7,000 tickets sold last month were sold during the holiday season, and it is safe to say that we sell more at that time than any other month, although we probably don't sell any more in December than we do in November, our comparative statement for December business is made with the preceding December, and we hardly ever compare it with the present month; we probably sold more in 1887 in December than we did in 1886, but I don't know; the statement for the month of January is not yet made, but I think it is safe to say that we will sell more in January than we did in December.

17 (25)

(2) I will ask you to state what has been the complaint for the traveling public about the service here; the second complaint after these changes have been made; any complaint or not.

A. Some complaint; one was the mail service.

(g) Now, then, I want to ask you if this mail isn't an hour later by reason of running this dummy or Ham's train than it would be if they came through here?

A. You mean the southbound road?

Q. Yes.

A. No, I don't.

Q. How much later is it?

A. Well, if they are due out of Haiti at \$1.50—

Q. I am talking about the mail from Memphis, that train coming through from Memphis.

A. Yes, sir, an hour later faced the south

Q. From the south, not only the passengers but the mails are delayed more than an hour in getting in?

A. Something like an hour; you say.

Q. I will ask you if it wasn't nearer 800 than 700 tickets sold—I mean 8,000—this year?

A. Yes, sir.

Q And your average monthly receipts were about \$22,000, including freight and all?

Pharmaceuticals

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Mr. Whybark: There is one train have left out entirely; I will prove it by this witness.

Q. Now, what time does the train go from Cape Girardeau by the way of Kennett and Caruthersville give in this town?

A. 9:05; you mean 881?

Q. Yes.

A. 881 at 9:05.

Q. In the afternoon?

A. In the evening; yes, sir.

Q. What time does that leave in the morning?

A. 5:50.

Q. 5:50 in the morning?

A. Yes, sir.

Q. Arrives at 8:00 and leaves at 5:00 the next morning?

A. Yes, sir.

Q. What is the name of the train going to Cape Girardeau?

A. 881.

Q. Does it stop at Caruthersville, Hayti, Kennett and

Stanton?

A. Yes, it stops at Stanton and up.

Q. Is it a passenger train?

A. Yes, sir; by the way of Boston.

Mr. Higgs: Nobody that wants to go to Cape Girardeau takes that train.

Mr. Whybark: That is all right; it is a passenger train.

A. That train has been running, I am sure, for the last five years.

Q. That is so far as you know; it was running when you came here?

A. Yes, sir; when I first came down this way, that was five or six years ago.

Q. It has been running over ten years?

Mr. Higgs:

(Q.) If I want to go to Cape Girardeau on this morning train and buy a ticket to Cape Girardeau, will you let me get on this train and go that route to get to Cape Girardeau on a straight ticket?

A. Yes, sir.

Q. How many men since you have been down there do you recall ever bought a ticket for that morning train to go to Cape Girardeau?

A. I never sold tickets for that train.

Q. Do you know of anybody in your whole experience?

A. I couldn't say; I suppose they do.

Q. Do you know of any one that ever did?

A. Well, sir, I don't know; I couldn't say any one from

Q. Do you know of any reason why any man would get on that train at Cape Girardeau and come that way to Caruthersville, leaving Cape Girardeau at the time it does and arriving here at the time it does?

A. In case he failed to make connection with 801.

Q. The Bull Moose would be coming right down, wouldn't it?

A. Yes.

Q. It runs every day, doesn't it?

A. Every day; yes, sir.

Mr. Whybark:

(Q.) That simply makes Cape Girardeau and Caruthersville and all intermediate points?

A. Yes, sir; the Moose and 881, also.

Mr. Higgs:

(Q.) There isn't a mail clerk that comes into this town on any train, is there, so you can mail a letter on the train?

A. There isn't.

Q. If you didn't happen to have your mail ready by 7 o'clock at night there is no way to get mail off at that time?

A. Have to have the mail down there at 7:10 or 7:15 every night.

Q. 801 and 802 carry mail clerks, do they not?

A. Yes, sir.

Mr. Whybark:

(Q.) We object to all that.

Mr. Higgs:

(Q.) Mail could be put on that train at any time up until the time it left at night or morning?

A. Yes, sir.

ELWOOD SCOTT, being sworn, testified as follows:

I am the City Marshal at Caruthersville and have been for about 15 years, and make the majority of the trains; the bulk of the travel comes on 801 and 802, ranging from 25 to 100 a day; this travel was pretty heavy when that train ran through Caruthersville—probably

a fourth or third heavier than it is now; the coaches on the Memphis train and the "turn-around" trains are worn and old and spotted up, although they seem to be clean enough.

Q. What per cent of the travel comes from the south end of the county—that is, the travel from Steele, Holland and Micola, not Micola, Steele and Holland—from the south end of the county, come on 801 and 802, compared with that of the Bull Moose?

A. There isn't much comes on the Bull Moose, only at court time; at court time it is generally pretty well loaded.

Q. Then what per cent of the travel, of the people coming from the south end of the county, would you say would use 801 and 802 if they came through here?

A. Two-thirds of it.

Q. There would be no necessity for the Bull Moose, then, in traveling, if they came through here in place of going through Hayti?

A. The Bull Moose train would be handy on some occasions if the others were to come through here.

Q. But for ordinary traffic?

A. For the ordinary convenience of the public it wouldn't be a great deal of service.

Mr. Whybark: Now, then, you spoke about 25 to 100 passengers on 801 and 802; do you mean one or both trains?

A. I mean something like that off of 801 and something like that going on 802, south in the morning.

Q. You mean 25 to 100?

A. Yes, sir; it will average at least 50 daily, or better.

Q. On each train, or both?

A. On each train, coming off and getting on; going to meet them at Hayti and getting off from Hayti.

Commissioner Bean: How large are these places south of Caruthersville in this State where train 801 and 802 stop?

A. Well, Steele is a town, I guess, of 1,500; Holland is quite so large.

Q. How large is Holland; how many people live there?

A. I expect something towards 1,000.

Q. What is the other place?

A. Steele, something like—

Q. Well, is there a third place?

A. There are two or three other little stations; there are not many people there; small population; there is a farming class of people come in there to come to town, you know.

Mr. Whybark: Do they have any station houses at those places?

A. I don't remember whether there is or not; I think there is at Grassy Bayou; somewhere down there.

Commissioner Bean: Are you acquainted with these people living at Steele and these other stations?

A. Most of them.

Q. They have quit coming here, to your knowledge, since the trains were changed?

A. They don't come in as much as they did.

Q. They don't come as often?

A. No, sir.

Mr. Higgs: If there is an average of 266 people a day come into this town and go out of this town, what per cent, assuming that to be an average of any month, what per cent would you say travel on 801 and 802?

A. Well, the most of them, I think, try to make 802, I believe it is, going south.

Mr. Whybark: 801?

A. They try to make that train, and what don't, of course, will have to lay over for the Bull Moose, which makes it pretty heavy going out in the evening; it is never as large in the morning.

Q. Would you say half of the travel going out of this town goes on 801 and 802, or more than half?

A. More than half.

Q. How large is Holland; how many people live there?

A. I expect something towards 1,000.

Q. What is the other place?

A. Steele, something like—

Q. Well is there a third place?

A. There are two or three other little stations; there are not many people there; small population; there is a farming class of people come in there to come to town, you know.

Mr. Whybark: Do they have any station houses at those places?

A. I don't remember whether there is or not; I think there is at Grassy Bayou; somewhere down there.

Commissioner Bean: Are you acquainted with these people living at Steele and these other stations?

A. Most of them.

Q. They have quit coming here, to your knowledge, since these trains were changed?

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Q. They don't come as often?

A. No, sir.

Mr. Higgs: If there is an average of 266 people a day come into this town and go out of this town, what per cent, assuming that to be an average of any month, what per cent would you say travel on 801 and 802?

A. Well, the most of them, I think try to make 802. I believe it is going south.

Mr. Whybark: 801.

A. They try to make that train, and what don't of course, will have to lay over for the Bull Moose, which makes it pretty heavy going out in the evening; it is never as large in the morning.

Q. Would you say half of the travel going out of this town goes on 801 and 802, or more than half?

A. More than half.

79 S. P. REYNOLDS, being sworn, testified as follows:

I am a civil engineer and am engineer for the Levee Board of the St. Francis Levee District; I have lived in Caruthersville since September, 1897, and was living there when the right-of-way was procured for the cutoff; I procured that right-of-way.

Q. What representations were made at the time that was procured as to what the cut-off should be used for?

A. For the freight traffic of the road.

Q. No passenger trains were to be run on that road?

A. I couldn't say that was made individually to me; it was made to the people at Caruthersville before any assistance was given by the City of Caruthersville to get that right-of-way.

Q. The citizens of Caruthersville did assist in getting that right-of-way under that stipulation and agreement?

A. Yes, sir.

Mr. Whybark:

Q. When was that done?

A. I would say the best way to get that would be from the right-of-way deeds; my recollection would be 1894 or 1895—I mean 1904.

Q. What time in 1904?

A. Well, I think the right-of-way was procured in that spring, but work was done in the fall of that year.

Q. There was no train running from St. Louis to Memphis at that particular time when you first took it up?

A. Well, I declare I couldn't answer whether there was a through train or not.

Q. It is a fact before the first train went through on the first day of June, 1904, there was a train running from Cape Girardeau down?

A. Perhaps so.

80

E. D. GILLEN, being sworn, testified as follows:

Mr. Higgs:

Q. Mr. Gillen, I will ask you how long you have been president of the Commercial Club in this city, and how long has the Commercial Club had up the question of service with the Frisco people, to your knowledge?

A. A year and a half.

Q. What representations were made to you by Mr.— who made the representations to you as to what would be done, if anything?

A. Well, the promise had from Mr. Nixon, over a year ago, was, he was going to fix up this loop around here, and the other promise I had from Mr. Hilton was that they would run the trains through when the loop was fixed up.

Q. In other words, Mr. Hilton told you they couldn't run the trains and keep that agreement because they didn't have a safe track and then when you went to Mr. Nixon Mr. Nixon promise you in the fall of this last year they would have the tracks so the trains could be run?

A. He promised me over a year ago he would fix up the tracks, and I also talked with him about the 9th of December of this year and he made me another promise, if I would let him alone until spring he would fix up the track for us, after having about an hour's conference with Mr. Hilton and Mr. Cornatzar in their office, and

their only argument against running the trains was the track was unfit to run those heavy trains over.

Mr. Whybark:

Q. You know that the Frisco Railroad is in the hands of a receiver, do you not?

A. Yes sir.

Q. Mr. Nixon told you that money matters was an item in that?

81 A. Mr. Nixon told me when he made the promise over a year ago, he said, "Judge Sanborn will let us have money for track improvements." I was after him for the depot and the train service, too. He said, "Judge Sanborn will let us have money for track improvements, but I can't hold out any promise for the depot." However, we got an order for the depot, and in my last conference with Mr. Hilton I told him there was no sense in building a monument of that kind if they were going to take the train service away.

Q. You got the depot?

A. Yes.

Q. You have a splendid depot?

A. It looks like it will be.

Q. Don't you know they can't pay out any money unless the Judge tells them to?

Mr. Higgs: That is a question for this Commission and not for this witness.

Commissioner Bean: It is cross-examination.

A. I understood that all the way along, that is what Mr. Nixon told me; he told me when he promised to put this heavy steel around here Judge Sanborn was allowing money at that time—I know they were putting in heavy steel from Thayer, Mo., to Springfield and from Emery, Mississippi to Birmingham, Alabama. I asked him why after a year elapsed we couldn't get a little loop around here, about fourteen miles with that heavy steel.

Q. What did he tell you?

A. He said, "If you will let me rest until June I will put it down there; that is the last promise."

Q. That is what Judge Sanborn told him to do?

A. He didn't add that clause in these; he told me——

Q. You knew they were operating under Judge Sanborn?

Mr. Higgs:

82 (Q.) They weren't operating under Judge Sanborn when they built this loop, were they?

A. He wasn't here at that time; I know they weren't.

J. E. HUTCHISON, being sworn, testified as follows:

Mr. Whybark:

(Q.) What is your official position?

A. General superintendent of the Frisco Railroad.

Q. When was the change made in the running of trains, trains 801 and 802, around by Hayti and Grassy Bayou instead of by the way of Hayti and Grassy Bayou via Caruthersville?

A. My recollection is it was changed in August, 1913.

Q. What trains did you put on in place of that?

A. Shortly after that we put on the train that has been spoken of as the Bull Moose run, 825 and 826, between Blytheville and Cape Girardeau, running via Caruthersville.

Q. That runs from Cape Girardeau to Blytheville, to Cape Girardeau in the morning by here and back in the evening?

A. Yes, sir.

Q. Do you remember what time it passes here?

A. I can give it to you exactly from the time card.

Q. Never mind that; then, what other trains run from Hayti via Caruthersville?

A. A train leaves Hayti in the morning and runs to Turrell with a connection there to Memphis and returns in the evening to Hayti via Caruthersville in both directions.

Q. That is number what?

A. 821 and 822.

Q. And the Bull Moose train, what is that?

A. 825 and 826.

Q. Then comes Ham's train?

A. Yes, sir.

Q. What is the number of that train?

A. I will have to refer to the card to give you all of them.
83 There is 893, 894, 895, 896, 897, 898, 891 and 892; I believe I covered all of them.

Q. Now, then, that train arrives here from Hayti at what time in the morning?

A. The first Ham train?

Q. Yes.

A. At 11:05.

Q. 11:05 in the morning?

A. Yes, sir.

Q. What is the number of that, now?

A. 893.

Q. Now, then, how long does it remain here at Caruthersville?

A. It remains here until 11:15, ten minutes.

Q. Then where does it go?

A. Goes to Hayti.

Q. Then how long does it remain there before it comes back?

A. It arrives at Hayti at 11:40 a. m. and leaves there at 11:55 a. m.

Q. What is the train it meets there?

A. It makes connection with 802, the through train from Memphis to St. Louis.

Q. Then it comes back to Caruthersville, and then where does it go?

A. It comes back to Caruthersville, reaching Caruthersville at 12:20, and turns around and leaves Caruthersville at 12:30 and goes to Kennett via Hayti.

Q. What is the number of the train there?

A. 892.

Q. Then where does it go?

A. It reaches Kennett at 1:45 p. m. and leaves there at 1:50 and comes back to Caruthersville as train No. 891, reaching Caruthersville at 3:20 p. m.

Q. Does it pass by Hayti?

A. Yes, sir.

Q. Then where does it go?

A. Then it leaves Caruthersville at 3:30 p. m. and goes to Hayti, reaching there at 3:55 p. m.

Q. What is the number of the train there?

A. 896.

Q. What train does it meet there?

A. Makes connection with train 801, the through train from St. Louis to Memphis.

Q. Then where does it go?

A. Then it leaves Hayti at 4:15 p. m. as train No. 897 and returns to Caruthersville, arriving at Caruthersville at 4:40 p. m.

Q. Then where does it go?

A. Then it leaves Caruthersville——

Q. What is the number of the train now?

A. It leaves Caruthersville as 898 at 4:50 p. m. and goes to Kennett and from there to Senath and from Senath back through Kennett and on to Campbell and ties up for the night.

Q. What is the number of the train there?

A. 898.

Q. Well, then, there is a train leaving Hayti and goes to Turrell, Arkansas; what is the number of that train?

A. That is No. 821.

Q. What time does that leave Hayti?

A. They are due to leave Hayti at 4:45 a. m.

Q. What train do they meet there?

A. It makes connection with the through train, the night through train from St. Louis to Memphis, train 805.

Q. Pulls the sleeper on to Caruthersville?

A. Yes, sir.

Q. What is the number of that train?

A. Train No. 821.

Q. Then it returns to Hayti at what time from Turrell?

A. Reaches Hayti at 11:25 p. m.

Q. What is the number of it there?

A. 822.

Q. Does it meet any train there?

A. Well, it picks up the St. Louis sleeping car at Caruthersville and takes it to Hayti and it is there picked up by the through St. Louis train, 806, about an hour later.

Q. An hour later?

A. Yes, sir.

Q. Now, then, in the morning from Caruthersville to Cape
85 Girardeau, what is the number of that train?

A. Train No. 882, leaves Caruthersville at 5:50 in the morning and runs to Cape Girardeau via Kennett and what is known as the Leachville branch.

Q. And Hayti?

A. And runs through Hayti to Kennett and goes up the Leachville branch to Cape Girardeau.

Q. What time does it arrive at the Cape?

A. At 12:45 p. m.

Q. What is the number of the train coming back from Cape Girardeau to Caruthersville, that same train?

A. Train No. 881.

Q. What time do they leave Cape Girardeau?

A. At 2:10 p. m.

Q. What time do they arrive at Caruthersville?

A. At 9:05 p. m.

Q. I believe that is all the trains?

A. The Bull Moose.

Q. Oh, yes; the Bull Moose, the Bull Moose is number what?

A. 825 and 826.

Q. 825 going south and 826 going north?

A. Yes, sir.

Q. What time does that leave Blytheville; it comes from Blytheville?

A. Leaves Blytheville at 6:05 a. m.

Q. What time does it reach Caruthersville?

A. At 7:25 a. m.

Q. What time at Hayti?

A. At 7:50 a. m.

Q. What time does it reach the Cape?

A. At 11:30 a. m.

Q. What time does it leave the Cape?

A. Leaves the Cape as train No. 825 at 3:10 p. m.

Q. What time does it arrive at Hayti?

A. At 6:40 p. m.

Q. What time at Blythville?

A. At 8:30 p. m.

86 Q. Now, do all these trains make all the stops between Hayti and Holland?

A. Yes, sir; make all the stops.

Q. How is it between Caruthersville and Hayti and above?

A. They make all the stops.

Q. What stops now does 801 and 802 make?

A. You mean between St. Louis and Memphis?

Q. No, between Caruthersville and Holland, the state line?

A. They——

Q. I mean between Hayti and the state line?

A. They make stops at Steele and Holland.

Q. Only two stops?

A. Yes, sir; between Hayti and the state line.

Q. It comes on up, goes from Grassy Bayou straight through to Hayti?

A. Yes, sir.

Q. Then on to St. Louis?

A. Yes, sir.

Q. What time does that leave Memphis?

A. At 7:45 a. m.

Q. What time does it arrive in St. Louis?

A. At 8:35 p. m.

Q. Now, then, what time in the morning does it leave St. Louis?

A. No. 801 leaves St. Louis at 8:00 o'clock in the morning.

Q. What time does it arrive in Memphis?

A. At 8:10 p. m.

Q. I believe that is all the trains, isn't it?

Q. Did the through train, night train, ever pass by this place?

A. Not since I have known anything about it, Judge, not since I have been in this part of the country.

Q. It never did?

Mr. Higgs: Yes, it did; I can show that and prove it by witness it did.

Mr. Whybark: How long have you been connected with this road?

A. I have been connected with the road——

Q. With this branch of it?

A. With this branch of it, about three years; I don't remember the exact date, but something like that.

Q. Now, you spoke about offering the time card; is this the time card you had reference to (indicating)?

A. Yes, sir.

Mr. Whybark: I offer the time card.

Commissioner Bean: That has a map on the back, has it?

A. Yes, sir.

Mr. Whybark: I offer time card No. 28-A covering the River and Cape Division, taking effect at 12:01 a. m. Sunday, November 29, 1914.

A. I would like to have it show that is the time card that is now in use.

Q. That is the time card now in use on the Frisco?

A. Yes, sir.

(Said document was marked "Exhibit A".)

Said time card shows the following train service at Caruthersville:

EXHIBIT A.

Train 821 leaves Hayti 4:45 a. m., operating via Caruthersville, leaving that point 5:10 a. m., running through to Memphis, serving passengers from Caruthersville to all points south of Caruthersville in Missouri and Arkansas, and Memphis, Tenn.

Train 822 leaves Turrell, Ark., 7:40 p. m., having a connection out of Memphis, Tenn., at 6:10 p. m., stopping at all stations between Turrell and Caruthersville, arriving at the latter city 11:00 p. m. and Hayti 11:25 p. m.

Train 826 leaves Blytheville 6:05 a. m., operating via 88 Caruthersville and Hayti to Cape Girardeau, reaching Caruthersville 7:25 a. m. and Cape Girardeau 11:30 a. m.

Train 825 leaves Cape Girardeau 3:10 p. m., operating via Caruthersville to Blytheville, reaching Caruthersville 7:05 p. m., and Blytheville 8:30 p. m.

In addition to these through continuous main-line trains via Caruthersville:

Train 894 leaves Caruthersville 11:15 a. m., arrives Hayti 11:40 a. m., connecting with train 802, passing Hayti 11:50 a. m., delivering passengers to that train from Caruthersville.

Train 895 leaves Hayti 11:55 a. m., taking passengers from that train back to Caruthersville, reaching there 12:20 p. m.

Train 896 leaves Caruthersville 3:30 p. m., reaching Hayti 3:55 p. m., connecting with train 801, passing through Hayti 4:10 p. m., delivering passengers from Caruthersville to that train.

Train 897 leaves Hayti 4:15 p. m., taking passengers from 801 back to Caruthersville.

Train 882 leaves Caruthersville 5:50 a. m., operating through Hayti-Kennett, Gibson, Clarkton and Brooks Junction to Cape Girardeau, reaching the latter point 12:45 p. m.

Train 881 leaves Cape Girardeau 2:10 p. m., operating via Brooks Junction, Clarkton, Gibson and Kennett, reaching Caruthersville 9:05 p. m.

Train 893 leaves Gibson 6:30 a. m., operating via Kennett with a side trip to Leachville, reaching Caruthersville 11:05 a. m.

Train 898 leaves Caruthersville 4:50 p. m., arrives Kennett 6:00 p. m., making side trip to Senath, reaching Gibson 7:33 p. m.

89 Train 892 leaves Caruthersville 12:30 p. m., arrives Kennett 1:45 p. m.

Train 891 leaves Kennett 1:50 p. m., arrives Caruthersville 3:20 p. m.

(The certificate of the Secretary of the Commission to the foregoing transcript of evidence is in due form and is omitted herefrom.)

Q. What could you do with reference to putting 881 and 882 on by the way of Caruthersville as it used to run without greatly inconveniencing the railroad?

A. You mean 801 and 802?

Q. Yes, 801 and 802.

A. We think from our experience that the schedule of the trains about 45 minutes to on the old time cards when the train did come to Caruthersville. My memory serves me right, the time was shorter than the way they go now, and we were never able to make the time.

Q. Why were you not able to?

A. The stop at Caruthersville is generally a little long, and the track conditions were never good on the line around through Caruthersville and are not good for high-class service today.

Q. What is the difference in the distance?

A. I think the difference in distance is almost exactly ten miles.

Q. Ten miles?

A. It is a very small fraction either over or under ten miles.

Q. In carrying passengers from the state line north, what would you be required to do in reference to the passenger rates?

A. Well, the passenger rate—

Mr. Higgs: We certainly object to that.

90 Commissioner Bean: I don't know what he is trying to get at.

Mr. Whybark: Ten more miles, they would charge a per cent of ten miles.

Commissioner Bean: I think that is competent.

Mr. Higgs: He can state the distance; it is a question of law what would be the result.

A. The distance is ten miles greater and the fares are based on 5 cents a mile, and I presume the fare would be 50 cents more.

Q. From Holland or Steele to here?

A. Well, to Hayti.

Q. Yes, to Hayti?

A. Yes, sir.

Mr. Whybark:

Q. Well, now, these train accommodations at Caruthersville, in and out, do they, in your necessities of the City of Caruthersville for passengers?

A. Well, there are 14 trains in and out of Caruthersville every 24 hours, and it seems to me—

Commissioner Bean: You mean passenger trains, do you?

A. Yes, sir.

—fourteen passenger trains in and out of Caruthersville every 24 hours, and it seems to me it affords at least reasonable passenger facilities for the City of Caruthersville.

Mr. Higgs: You say there are 14 trains in and out of Caruthersville; when you say that do you mean a train every time it backs in and backs out?

Mr. Whybark: No train backs in and backs out.

Mr. Higgs: They did until this complaint was filed.

A. Any passenger train arriving and departing at Caruthersville,

Q. You have just mentioned it, haven't you?

A. Yes, sir; every train carries its number.

Q. When it comes in here it bears one number and when it goes out it bears another?

A. Yes, sir; if it goes through it carries the same number through.

Q. So far as the train that leaves here in the morning and goes to Cape Girardeau by the way of Kennett on that branch, referred to a moment ago, that isn't considered a train that hauls traffic from Caruthersville to Cape Girardeau, is it, but it is considered a train for the branch you just mentioned?

A. I wouldn't consider it a train that would be made use of for through passengers between Caruthersville and Cape Girardeau, but it would be to all points on the branch from Caruthersville to all points south of Cape Girardeau.

Q. You say the old schedule was 35 minutes; I will ask you if you aren't mistaken about 801 and 802, and if it wasn't 30 minutes?

A. I said that was my recollection, it was 35 minutes; I haven't looked it up; I might be mistaken.

Q. I will ask you if it isn't a fact it has come to your knowledge, either from actually going over that track or your capacity as superintendent, that when there was only 35 minutes difference, there were places in this track the train went so slow a person could get out and walk on the side of the train when it was in motion?

A. I think you are overblowing it some; the track wasn't good and the train ran slow.

Q. The fact is, is it, that, assuming if they had the same kind of track and same thing, and the train ran 35 minutes, and you had a person on the side of the train, and the train was in motion, it would be a fact that a person could get out and walk on the side of the train when it was in motion?

A. Yes, sir; I think it would be a fact that a person could get out and walk on the side of the train when it was in motion.

Q. Now, if it will make about 15 minutes difference, is that not so?

A. Yes, sir.

Q. How do you compare that difference?

A. The stops at Caruthersville are generally about 10 minutes on that train, and with the track condition we have had and the track we have now, I think that we would use somewhere from 25 to 30 minutes more time making that additional 10 miles in addition to the time required to stop at Caruthersville.

Q. What do you think would be the difference in time if you had good track over there?

A. Well, I think we could make the run in 10 minutes quicker time if we had as good track as on the main line.

Q. You think it would take 35 minutes to make it if you had as good track over here as you have on the main line?

A. Pretty close to it, would be my judgment.

Q. Why do you think it would take 35 minutes more to make that 10 miles when your ordinary schedule would require about 14 miles to make that time, considering the fact that you have to unload and

Q. ~~That is the question, isn't it, that if you~~ to run 801 and 802 around here, ~~and I understand it is the same way~~ could require more time than you are willing to spare, that is?

A. That is one reason, and we figure it would lengthen our schedule; my honest opinion is about 45 minutes, which would mean that every passenger using that train on the main line to points north of Havi or points south of Grassy Bayou, or vice versa, would be about 45 minutes longer on his journey than he is the way the train is routed now.

Q. Can you explain to the Commission why it is that you save time by meeting 801 and 802 going by the cut-off and make connection with the Ham train when the greater part or half of the time of the year 1914 that train was delayed by reason of the Ham train or turn-around being late?

A. I am not aware that that correctly reflects the facts.

Q. If it does correctly reflect the facts, does that carry out your theory you make better time and it is cheaper for the company to run the trains the way they are, than run them through here?

A. I don't believe that I am on record as saying it was cheaper, although it does save 220 miles pay for the engineer and fireman every day.

Q. Twenty miles pay?

A. That is about all the saving there is; it don't amount to anything.

Q. You save more than 20 miles pay on the turn-around with the cut-off?

A. You save about 20 or 22 miles pay for the engineer and fireman, but it is a matter of 20 or 22 miles; it don't amount to as much as I have said.

Q. I am going to leave it at that point, so far as the operation of the cut-off is concerned, is that correct?

A. That is the way it is, sir.

Q. Well, you have explained to the Commission why it is, if your schedule is short as it is, in all reasonableness, that the train frequently leaves Havi late and gets into St. Louis on time?

A. I don't know that we do that; it hasn't come to my attention.

Q. If it is a fact that it does do that two or three times a week, would you say your schedule now is as short as it could reasonably be made for the safety of the passengers and for the ordinary carrying on of your business by those trains?

A. I would have to answer that question in this way: that we have scheduled the trains through between St. Louis and Memphis in both directions as fast as we think they should—as fast as we think they should run and permit them to do their work. The trains are local trains and the work varies greatly on them; the day the work was light they might make up an hour or more and the very next day they might lose an hour on account of the work along the line, and just prior to the holidays we did have some trouble on account of

the heavy parcels post and express business keeping those trains on time, but there are days when we can make up time and there are days when we can't.

Q. I will ask you if they came in any day prior to the holidays, when 801 and 802 went into the station late?

A. At St. Louis?

Q. Yes. Do you recall any days during the holidays or prior to the holidays?

A. No, sir; I can't give you a date, but I feel quite certain that they were late several times just before.

Q. Then you want the Commission to understand the reason why you aren't running 801 and 802 through Caruthersville is that it lengthens your schedule beyond the time you think it ought to be?

A. Yes, sir; that is one reason.

Q. Mr. Hutchison, have you any actual knowledge yourself of the promises and representations made by your company at the time this cut-off was made, when the right-of-way was secured for this cut-off, as to train service?

A. No, sir; I think all the arrangements were made before I entered the service of the Frisco Railroad, at least before I knew anything about this part of the line; I have no knowledge of it at all.

Q. If it now comes to you, and if you were now assured of the fact that your company obtained the right-of-way through from Hayti, what is known as the cut-off or right-of-way, and at that time promised the people of this city who assisted them in obtaining that right-of-way that they would continue to run trains 801 and 802 through this city, do you, with your connection as general superintendent, feel that morally that obligation is binding on your company to perform that agreement or keep that agreement?

A. I will have to say I think any promise made in good faith should be kept, that is, if it is possible to keep it.

Q. If that promise was made, do you think it is now possible to keep it and to run trains 801 and 802 through this city?

A. Oh, it is possible; certainly it is possible.

Q. Without any great inconvenience to your company?

A. No, I wouldn't add that; I consider it would be considerable inconvenience, and result in considerable loss of revenue and more inconvenience to the other users of the train.

Q. Do you think you have any moral right, if that promise was made, because of the difference of 45 minutes in time, to abrogate that promise, although it might not be legally binding?

A. I don't think any man has a right to abrogate any promise he has made; I would have to know all the facts about that before I could answer you specifically.

Q. Did you hear the testimony of S. P. Reynolds before the Commission?

A. He was the last witness?

Q. Yes.

A. Yes, sir.

Q. Then if his statement was true that he obtained for your

company the right-of-ways from citizens living in this city and the promise was then and there made at that time that train 801 and 802 would be run through this city, is there any good business reason or any reason why that promise should not be kept and that train should not be run through here?

A. There might be.

Mr. Whybark: I object to that question; it is wholly incompetent; it has nothing to do with this.

Commissioner Bean: I think it is a matter of argument; he may answer it.

Mr. Higgs: I think, your Honor, you held absolutely in a case before this Commission, your Honors held in a case absolutely in keeping with this, even though it wasn't binding, the Commission ought not disregard it unless they had a valid reason.

Commissioner Bean: That was the Clay County case?

Mr. Higgs: I forget the case; I have a copy of it.

A. If the conditions were the same then that they are now, the development of the country and the public policy hasn't made it necessary to change, then the promise should be kept, if it was made.

Q. The physical railroad property is the same now as it was then, is it not?

A. I am sure I don't know.

Q. I mean the same lines, the same track?

A. I think there has been considerable track laid since the time Reynolds referred to; I don't think the line was completed between St. Louis and Memphis at that time.

Mr. Whybark: (Q.) Now, speaking, Mr. Hutchison, of the item it would take to bring 801 and 802 around by the way of Caruthersville, you said forty-five minutes?

A. Yes, sir.

Q. Now, did you consider in that the change made at Grassy Bayou from this track from the cut-off to this track?

A. Yes, sir—

Q. At Hayti, also?

A. Yes, sir; I had it in my mind, but I didn't go into detail in explaining it, but at Hayti we would have to back around the Y and at Grassy Bayou we would have to stop and open and close the switch to get on this other track.

Q. You had all that in mind in estimating this forty-five minutes?

A. Yes, sir.

Commissioner Bean:

(Q.) Just a minute. What kind of trains are these two Memphis trains, that is, from St. Louis to Memphis?

A. They are pretty good trains with steel equipment.

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Q. They are the best trains you run over this line?

A. The night train is the best train, Judge.

Q. What time do you leave St. Louis?

A. Leave St. Louis at 9:25, I believe.

Q. What is the service to this town rendered by that train?

A. It carries a sleeping car that is cut out at Hayti and picked up at Hayti and brought over here and stays here until 5:45 a. m. and then goes to Kennett.

Q. When does it leave Memphis?

A. Leaves Memphis at 9:25 p. m.

Q. What is the service going north from here on that train?

A. The sleeping car comes across from Kennett; it comes over here a few minutes after 9:00 o'clock in the evening, and it stays here until about 11:15 and is then picked up and carried to Hayti and there it is put on the through train for St. Louis which passes there about 12:30.

Q. There has been no change in that service?

A. No, sir.

Q. That train is what kind of a train, what kind of cars?

A. Solid steel train excepting the Pullman cars; we don't always get steel Pullman cars.

Q. There is a smoking car?

A. Yes, sir; there is a baggage and mail.

Q. Tell what kind of cars the train has; state what kind of cars.

A. They have a baggage and mail car, coaches, dining car and Pullman cars.

Q. How many Pullmans?

A. Three as a rule.

Q. Now, the train that leaves St. Louis in the morning, going to Memphis, that is 801, isn't it?

A. Yes, sir.

Q. What kind of a train is that?

A. That has very much the same make-up as the night train, except it hauls no Pullmans; it carries a dining car, coaches, baggage and mail car.

Q. Carries the same equipment coming north?

Mr. Whybark: Not steel cars?

A. They are pretty much all steel or steel underframe cars in that train.

Q. These other cars that reach here on this Bull Moose train and this Ham train, as they call it, aren't all that construction; they are older cars?

A. Yes, sir; cars taken out of the through service.

Q. As compared with 801 and 802 they are second-class trains?

A. They are inferior equipment; yes, sir.

Q. Now, is this diversion of this run temporary or permanent; what is the policy of the road in regard to that?

A. I suppose the diversion of 801 and 802 is meant to be permanent.

Q. What is the distance from Hayti to Grassy Bayou over the cut-off?

A. 5.9 miles.

Q. What is the distance around the loop?

A. 16.5 miles.

Q. What is the actual running time per mile over the cut-off, do you know, this train that has been diverted? Not the scheduled time, but the time it actually makes it in ordinarily?

A. There is a railroad crossing that we have to stop for in there; we don't allow any of our trains to exceed fifty miles an hour, and they will make that limit on that track if they get them going that fast.

Q. What time do they actually make this run in from Hayti to Grassy Bayou?

A. I have gone across there in ten minutes on the train.

Q. Is that the usual speed?

A. Well, I should say about twelve minutes would be a good average.

101 Q. Do they make the same rating, miles per hour, going around the loop as they do over the cut-off?

A. No, sir; they can't run as fast.

Q. Why is that?

A. Track conditions.

Q. If this track we put in condition around the loop what would you say about letting this train go around the loop; what difference in time would there be?

A. I think we would save ten or twelve minutes.

Q. Has the condition of the track anything to do with diverting the train?

A. No, sir.

Q. Now, is 801 and 802 held at Hayti for this other train always to make connections with it?

A. I don't think we ever missed the connection.

Q. Is it the rule of the road to hold the train for the connection?

A. Yes, sir.

Q. Now, do you think in the long run you save any time with that kind of a rule?

A. I know we do, because we are not often late.

Q. What do your operating records show about that?

A. I haven't—

Q. Where is the dispatcher's office; they have a record of that?

A. At Chaffee; I haven't that; I could get it for you.

Mr. Whybark: We could furnish that.

Commissioner Bean: If more delay is caused by waiting for that train than time required to go around the loop, there would be no reason for this diversion?

A. No, sir.

Q. What additional service has been put on by reason of the fact of diverting this train?

A. The train spoken of as the Bull Moose train running between Blytheville and Cape Girardeau by the way of Caruthersville.

Q. Has there been any additional service in the Ham train?

102 A. Two round trips of that train between Caruthersville and Hayti connecting with the main line trains.

Q. Two additional trips for that train?

A. Yes, sir.

Q. Which of those runs, if any, are involved in the Kennett case before the Commission?

A. The Ham run.

Q. Which one is that?

A. The whole day's work.

Q. Is that a temporary arrangement during the pendency of that case?

A. Yes, sir.

Mr. Higgs:

Q. It has been temporary for how long?

Commissioner Bean:

Q. If that is taken off how will it leave the service here; what trains will it leave?

A. If that Kennett-Senath train is taken off——

Q. You propose to take it off down there, not over here?

A. That is all the Commission asked us to do; all we had was a back-up from Kennett to Senath.

Q. I didn't understand; I thought this whole thing was involved.

A. It is a forced back-up; there is no way to turn the engine; it is a back-up from Kennett to Senath.

Q. It is two additional trips?

A. One round trip.

Q. One round trip before this additional round trip?

A. Yes, sir.

Q. What is the distance from Kennett to Senath, approximately?

A. I think it is nine miles—yes, it is approximately nine miles.

Q. How does Caruthersville compare in importance with other towns on your road between St. Louis and Memphis?

A. Well, Caruthersville is one of the better towns.

Q. How does it rank in regard to the business, passenger business, as regards other towns along the line, say, in Missouri, not from St. Louis to Memphis, but from St. Louis to the state line?

103 A. Well, I haven't seen a comparison; I don't know that I ever did compare that particular feature; I don't know that I could answer you intelligently, Judge.

Q. As a railroad man, would you regard it as good service to require passengers from Caruthersville to transfer at Hayti to get on this first-class train, in fact, the best daylight train you run, would you consider that good service as a traffic man?

A. Yes, sir; I think it is good service.

Q. And justify it on the grounds it saves 40 minutes to all passengers other than those traveling to Caruthersville?

A. Yes, sir.

Mr. Higgs:

Q. A man leaving on your night train, the regular night train, getting on there at 9:25 and coming to Caruthersville, will get over to Hayti at 12:20, will he not?

A. You mean the north-bound coming from Memphis?

Q. Yes.

A. About that time; yes, sir.

Q. He will have no way of getting from Hayti to Caruthersville unless he hires a buggy to get there?

A. No, sir; we have never had any connection with that train for that service.

Q. If a man wants to go to St. Louis at night and doesn't have money enough to buy a sleeping car ticket he has got to go down and wait until 11:15 and then he goes over to Hayti and waits until that fast train gets there, over an hour's lay-over?

A. About an hour at Hayti.

Q. And it is only people who can afford to buy a Pullman car ticket that can get any accommodation?

A. They get much better accommodation, of course.

Mr. Stewart:

Q. In running 801 from St. Louis to Memphis, what connection does 801 make at Memphis with other trains, if any?

104 A. They make connection with trains leaving on all the railroads at Memphis; I can't give it to you in detail.

Q. I don't care for it in detail; I simply want to know if there are connections made at Memphis for other points?

A. Yes, sir; there are some important ones; we get in a little late for them now.

Q. You said if 801 was run over the loop via Caruthersville that it would mean a lengthening of the schedule from 35 to 45 minutes?

A. Yes, sir.

Q. What effect would the lengthening of the schedule have on 801's schedule at Memphis?

A. Well, we would miss all the connections practically at Memphis unless we left St. Louis earlier; if we left St. Louis earlier we would leave there so early we would miss all the connections there.

Q. Is the same thing true with reference to train 802 leaving Memphis?

A. Just exactly.

Q. If the schedule was lengthened by reason of running via Caruthersville?

A. Yes, sir.

Commissioner Bean:

(Q.) What was the old schedule?

(No response.)

Q. Has anybody got the old schedule?

Mr. Whybark: What is that?

Q. The former schedule of this train.

Mr. Whybark: Before 801 and 802 were diverted?

Commissioner Bean: Yes, sir.

A. I can get one and send it to you.

Mr. Higgs:

(Q.) How was it possible to make your connections when you run by this town, when you say it is almost impossible for you to make them now?

A. We didn't.

Q. You made the connection when you did run by here, did you not?

A. No, sir; we did not.

105 Q. Now, what particular ones did you miss you are now making?

A. Well, I couldn't tell you without getting a guide and looking them up.

Q. Can you now specify any particular connection that you missed, that you didn't make when you went by Caruthersville with 801 and 802 that you are now making?

A. No, sir; I can't from memory.

J. N. CORNATZAR, being sworn, testified as follows:

Mr. Stewart:

(Q.) Mr. Cornatzar, are you connected with the St. Louis & San Francisco Railroad Company receivers?

A. Yes, sir.

Q. In what capacity?

A. General passenger agent.

Q. Where are you located?

A. At Memphis.

Q. Are you familiar with train 801 and 802 between St. Louis and Memphis over the Frisco?

A. Yes, sir.

Q. Are you familiar with the connection that train 801 now makes at Memphis with other trains over the Frisco?

A. Yes, sir.

Q. And over other roads out of Memphis?

A. Yes, sir.

Q. What time does train 801 reach Memphis?

A. 8:10.

Q. 8:10 p. m.?

A. Yes, sir.

Q. It is in evidence here that to run train 801 via Caruthersville instead of over what is known as the Hayti cut-off would mean a lengthening of the schedule from 35 to 45 minutes?

A. That is my understanding.

Q. If that were done what effect, if any, would it have on the connections 801 now makes at Memphis?

A. Well, we would miss a good many very important connections.

Q. Can you specify what they are?

A. I might state that prior to eighteen months or two years ago our 801 was due into Memphis, I am quite sure it was 8:55. Of course, the most important connection out of Memphis for 801, as viewed by the Frisco, is our own connection, the connection for Birmingham, Atlanta, Washington and New York; that train leaves Memphis at 9 o'clock, and back at the time when 801 ran around by Caruthersville; unless it was exactly on time we had to hold that train for the South. The L. & N. leaves Memphis for Nashville, Louisville and Cincinnati at 8:40 p. m. That is a rather important connection, very largely for the people along our line in Arkansas; there are a good many of those people that have relatives and business connections in West Tennessee, Nashville, over in that country; we would discommode those people if we arrived later; and, furthermore, there is a transfer between our station and the L. & N. station at Memphis.

Q. State for the information of the Commission whether or not the road that you have been mentioning at Memphis uses the same passenger station as the Frisco does?

A. The Frisco, of course, uses the same station that the train arrives at; the L. & N. uses a separate station, there is a transfer.

Mr. Higgs: You might state the distance while you are at it between the two stations?

A. I will say four short blocks.

Mr. Stewart: Are there any other connections that would be affected by the lengthening of the schedule of 801?

A. Why, I will have to change my figures on the L. & N.; they leave at 8:20 instead of 8:40.

Q. Did you get my last question? I say, are there any other connections that would be affected by the lengthening of the schedule of 801?

A. No. We miss some connections now under the present schedule; we miss the Southern Railroad, the New York Limited that carries the business to Chattanooga, Bristol and that section of the country; we miss that now, they leave at 7:45.

Q. Are you familiar with the connections made by train 802 at St. Louis?

A. Yes, sir.

Q. What effect would the lengthening of the schedule of train 802 so as to run via Caruthersville have on those connections?

A. 802 is now due in St. Louis at 8:35 p. m.; our No. 7 leaves St. Louis at 8:37 p. m.; that is the train that would take people to Springfield, Missouri, Monett and that section of the country from points over in this section of Missouri, and the Texas Limited is due out of St. Louis at 8:32; we miss that train by three minutes at the Union Station; we have to make those connections at Tower Grove; now, there is a good deal of travel from the Third District to Chicago.

Q. What do you mean by the Third District?

A. I mean this——

Q. Those are the lines of the Frisco in Southeast Missouri?

A. Yes, sir.

Q. Known as the Third District?

A. Yes, sir. The daylight trains out of St. Louis all leave around 9 o'clock for Chicago; some of the lines have 11 o'clock trains out of St. Louis for Chicago; the Frisco trains are due out of St. Louis around 9 o'clock; we have no later trains, mostly eastern trains. The connections now between our 802 and a great many connections at St. Louis is very close; 35 to 40 minutes is not enough time for passengers to make their proper arrangements on arriving at a big terminal like St. Louis.

Q. Do you know when the change was made in the running of trains 801 and 802 via Caruthersville?

A. I think about a year and a half ago.

Q. Were you connected with the Frisco at that time?

A. Yes, sir.

Q. What was the cause of that change, if you know?

A. It is my recollection that our people were endeavoring to improve the service of 801 and 802 so as to perform the service that the train was originally inaugurated for; that is, to take care of the through traffic and the people along the line of the road to its best ability.

Q. Is it an interstate train?

A. It is an interstate train; yes, sir.

Q. Now, as general passenger agent, have you jurisdiction over these lines in Southeast Missouri?

A. Yes, sir.

Q. Comprising the Third District of the Frisco?

A. Yes, sir.

Q. It is true trains 801 and 802 do local work between St. Louis and Memphis as well as the carrying of through passengers?

A. Yes, sir.

Q. If the schedule of those two trains are lengthened from 35 to 45 minutes, what effect would that have on local passengers carried on those trains as well as the through passengers?

A. It would discommode our local people along the line as a whole; it would put them into Memphis very late, so much so they couldn't make a great many important connections; it would be very disagreeable; that applies on 802 arriving in St. Louis not later than 8:35 p. m. As a matter of fact, we have been petitioned by the people along our line, more especially between Sikeston and Cape Girardeau and that section, to get 802 into St. Louis earlier.

The passenger department have asked the operating department on every schedule if it would be possible to do that, and the operating department say they can't operate these trains any faster with safety. It is very unfortunate we can't get 802 into St. Louis earlier in the evening; 8:35 is too late.

Q. What is the distance from Memphis to St. Louis?

A. 305 miles.

Q. What is the time consumed by train 802?

A. Leaves Memphis at 7:45 in the morning and arrives in St. Louis at 8:35 in the evening.

Q. Leaves Memphis?

A. Yes; 7:45 in the morning.

Q. Arrives in St. Louis?

A. 8:35 p. m.

Q. Is the time of train 801 from St. Louis to Memphis practically the same?

A. 801 leaves St. Louis at 8 o'clock in the morning and arrives in Memphis at 8:10 p. m.; it is a little faster schedule.

Q. Each of those trains does local work, of course, and is required to stop at stations where there are passengers to board the train or disembark from the train?

A. Yes, sir.

Q. And each stop consumes a certain length of time, owing to a certain amount of work to be done at that station, does it not?

A. Yes, sir.

Q. How are those trains operated now with respect to the number of stops to be made and the amount of work to be done and the speed of the train, considering the safety of operation?

A. As a traffic man, we let our operating people answer these questions of speed and operation of our trains.

Q. Do you know whether or not that train is operated now as fast as it can be with safety, you may state, considering the amount of work it is required to do?

A. Well, I can only state our operating people, when the
110 passenger department recommends early arrivals at these terminals, state they can't operate them on any faster schedules with safety?

Q. If the schedule is lengthened 35 to 45 minutes that of itself would necessitate an increase in the operating speed of that train in order to make the present connection both at St. Louis and Memphis?

A. That is true.

Mr. Higgs: Mr. Cornatzar, what position or what standing has this place from a passenger standpoint, the passenger traffic, with other stations between St. Louis and Memphis?

A. I am just looking to see if I have those figures of our ticket sales at these different stations, but I haven't. I would say that Caruthersville ranks next to Cape Girardeau on ticket sales.

Q. Isn't it a fact your company so reported to Judge Sanborn in the United States Court that it was second in importance between St. Louis and Memphis?

A. On the sale of tickets?

Q. Yes.

A. I don't know that they did that, but my recollection is that the ticket sales at Caruthersville are the second on the line, Cape Girardeau being first.

Q. You, yourself, know nothing about whether this train could be operated with safety and the schedule shortened?

A. I wouldn't like to state my views on that, because we traffic people leave those matters entirely to the best judgment of our operating people.

Q. State to the Commission what is the condition of your road bed between St. Louis and Memphis?

A. It is considered very good.

Q. I will ask you if it is not considered one of the best roads in the State?

A. Well, I would say it is as safe as practically any of them.

Q. Will you give to the Commission any reason why as fast time should not be made over this division from St. Louis to Memphis as any other road in the State?

A. Well, the question of stops and the work of the trains very largely govern that.

Q. The running time from St. Louis to Memphis is approximately twenty-three miles an hour, is it not?

A. In reply to that I will state that is approximately our running time from Springfield to Memphis, down on the other district.

Q. From Springfield to Memphis?

A. Yes, sir.

Q. What is the running time from Kansas City to Memphis on the same road?

A. The Kansas City Florida Special is faster than that?

Q. What is its time over there?

A. About somewhere around thirty-five miles an hour, it hasn't many stops; it runs sixty miles without a stop in many places.

Q. Then it isn't the road bed that causes this slow schedule, but the stops from St. Louis to Memphis?

A. Quite naturally, if the train didn't make any stops it would make better speed, could make better speed.

Q. Now, being in charge of the passenger department, explain to the Commission, conceding it to be a fact, why it is a train can leave Hayti thirty-five to forty minutes late and arrive at the Union Station on time during the heavy seasons of the year?

A. Well, I think there would be a good many factors enter into that; I think Mr. Hutchison—

Q. Do you think you could shorten your schedule with safety?

A. I do not.

Q. Do you think that if this train 801 and 802 went through the cutoff it would cut forty-five minutes off the time getting into St. Louis if we had a good track like the cutoff track on this road bed, ballasted up?

A. That is the statement made by the operating people and the passenger department.

112 Commissioner Bean: Has the new depot been completed?

A. Not quite.

Q. What is the expense of that depot?

A. I would have to let Mr. Hutchison say; I don't remember.

11. I have no objection to Mr. Hutchison telling.

Mr. Hutchison: I can tell you approximately; we are not through it is going to cost about \$12,000.

Commissioner Bean:

(Q.) What was the old schedule of this train before it was diverted; what time did it leave St. Louis, and what time did it arrive at Memphis?

A. My recollection is it left St. Louis as at present, 8 o'clock, and it got into Memphis at either 8:45 or 8:55 in the evening.

Q. There is no difference in the time it left; the arriving time was later, simply giving more time on the road?

A. Yes, sir; we arrived in Memphis either at 8:45 or 8:55 against the present arrival of 8:10.

Mr. Higgs:

(Q.) 8:40, wasn't it?

A. Somewhere around there.

Mr. Stewart:

(Q.) The present arrival is 8:10?

A. It arrives in St. Louis at 8:35 and arrives at Memphis at 8:10.

Q. It is shorter one way than the other?

A. Yes, sir; a little bit shorter.

Q. Shorter the Memphis way?

A. Yes, sir.

J. E. HUTCHISON, recalled.

Mr. Stewart: Please explain to the Commission the number of stops that trains 801 and 802 makes between St. Louis and Memphis?

Commissioner Bean: Aren't they shown on the time card?

Mr. Stewart: Well, the time card will show the stops, 113 but the purpose of this is to show the length of time required to do the work at each stop.

Q. You may state the number of stops and tell in a general way the amount of time to do the station work at each stop, what effect that has on the operation of the train and the schedule.

A. The train makes, I think, fifty regular stops each way between St. Louis and Memphis; they make eleven flag stops; that is, they stop on flag when there are passengers to get on or get off at eleven points, and there are ten road crossings they have to stop for.

Q. Those are railroad crossings?

A. Those are railroad crossings; that is a total of seventy-one stops outside the necessary stops for water and coal.

Q. What is the average time required for a station stop?

A. We have always figured—most operating men have figured that a passenger train cannot stop in less than three minutes; that is, it will lose three minutes going from a given point to another

given point if it makes a stop between the two points as against the time it would make if it went through without stopping.

Q. That would represent the time lost at a flag stop, would it?

A. Yes, sir; or a railroad crossing.

Q. Of course, if you have a station stop where you have work to do, your time is correspondingly longer?

A. Yes, sir; the amount of time necessary to do the work, whatever it may be, would be added.

Q. Now, the running schedule of train 801 and 802 between St. Louis and Memphis is based on the distance and the number of stops that those trains are required to make.

A. Yes, sir.

Mr. Higgs:

(Q.) I will ask you what is the condition of your road bed
114 now and your rolling stock compared with what it was two years ago, depreciated or better?

A. Well, I flatter myself it is better.

Q. You, at least, ought to be able to, with the improvements you have made now, to make as good time as you do over any given route, especially this route?

A. So far as the track and road bed is concerned, yes, sir.

Q. And rolling stock?

A. And rolling stock.

Commissioner Bean: Can as fast time be made around the loop as on the cutoff from Hayti to Grassy Bayou?

A. No, sir.

Q. Why not?

A. On account of the track conditions.

Q. Suppose the track conditions were equal, what would you say?

A. Well, you could make as fast time out in the open, between stations, if the track was equal, of course.

Q. How much would that shorten the time if that track were put in first-class condition; would you think over 40 minutes; what could it be shortened to?

A. Ten minutes.

Q. Ten minutes is the best that could be done?

A. Yes, sir.

Q. How far is it around the loop from Hayti to Caruthersville?

A. Sixteen miles.

Q. And seven miles the other way?

A. Six miles the other way; it just lacks a tenth of a mile, to be exact, being ten miles further around via Caruthersville than the other way.

Mr. Stewart:

(Q.) What would be the cost of fixing up the road from Hayti to Grassy Bayou by the way of Caruthersville?

Mr. Higgs: We object to that.

115 Commissioner Bean: He may answer; I think you had some testimony on that.

Mr. Higgs: I withdraw it.

A. I should think it could be put in reasonable condition for \$2,000 a mile; it couldn't be put in as good condition or anything like as good condition as the main line for that money.

Q. What would it cost to put it in as good condition as the main line from Grassy Bayou to Hayti?

A. I should say between \$6,000 and \$7,000 a mile.

Mr. Higgs: Mr. Hutchison, don't you think you are taking a chance on human life if that track is as bad as you say it is, if you run your trains down that line?

A. No, sir.

Commissioner Bean:

(Q.) It is bad between Caruthersville and Grassy Bayou?

A. Yes, sir.

Q. It isn't as bad between Caruthersville and Hayti?

A. It isn't what I call right good track; it isn't unsafe anywhere for slow speed, a moderate speed of 20 or 25 miles an hour for a passenger train.

Mr. Higgs:

(Q.) You do make more than 25 miles an hour with your trains over that?

A. Between here and Hayti I think we do a little better.

Q. You make better than your schedule now with the other trains, don't you, on the main line?

A. On the main line?

Q. You make as good as your schedule on your main line now with other trains?

A. I don't know what you mean by as good as our schedule.

Q. What is the difference between given points on your schedule for the Bull Moose around that loop and your 801 and 802 for the same number of miles?

A. I think there is a schedule of about 19 miles an hour from Grassy Bayou to Hayti around here; I am talking from memory; I think that is about it.

Q. About 23 miles an hour on the main line?

A. Yes, sir.

Q. The difference is between 19 and 23 miles an hour?

A. Of course, the schedule doesn't mean much as to the speed the train runs.

Q. And you think it would be very dangerous to run that day train around via Caruthersville in the condition the track is now in?

A. No, sir; I never said that.

Q. If that has been made the claim to the people why the trains haven't been run over here, it has been without your knowledge?

A. If anybody has said—

Q. It has been without your knowledge?

A. Yes, sir.

Q. If that representation was made to the Commission in an informal complaint that was filed heretofore it is incorrect, is it?

A. I would say yes.

Mr. Stewart:

(Q.) I will get you to state to the Commission the difference, if any, in the equipment in trains 801 and 802 and the Bull Moose and the trains that now operate over this Caruthersville branch, the loop, as it is termed; that is, trains 821 and 822 and 825 and 826 and the Ham train between Hayti and Caruthersville?

A. Well, trains 801 and 802 have modern equipment; that is, they are heavy, about as heavy as any passenger equipment that is built; they have a comparatively heavy engine, not as heavy as some, the country is level, and we don't have to run as heavy power as in a hilly country; but a comparatively heavy engine, the trains that run through Caruthersville all have light equipment; the cars will only weigh half or a little more than half as much as the
117 cars running on the through trains, and the engine is a light engine, very much lighter than the other engines.

Q. In view of the difference in the weight of the trains and the motive power, would it be the fact that trains 801 and 802 could be operated over the loop at the same rate of speed that the present trains are operated over that track?

A. I wouldn't allow them to be operated at the rate of speed the light trains are, if I could help it; we permit 20 to 25 miles an hour with the little light trains, but I wouldn't want 802 to come over faster than 15 miles an hour.

Q. Did you consider that in getting your estimate of the length of time, the time the schedule would have to be lengthened in order to run trains 801 and 802 via Caruthersville?

A. Yes, sir.

Mr. Higgin:

(Q.) Why did you let them run 801 and 802, making as fast schedule when they did run by here with the same equipment they now have?

A. I did all I could to hold the speed of the train down to 15 miles an hour between Caruthersville and Grassy Bayou and issued orders; I don't know whether they were lived up to or not.

Q. Didn't they run faster than that with the knowledge of your superior officers at Cape Girardeau and with the instructions from the dispatcher at Cape Girardeau to make better time than that; did that come to your knowledge?

A. It never came to my knowledge; no, sir.

Q. You don't say that that wasn't done?

A. No, sir.

Q. Not done frequently?

A. It could have been done and we not know it.

Mr. Stewart:

118 (Q.) I will ask you if it isn't a fact, since trains 801 and 802 have been diverted from Caruthersville, that there has been an increase in the size of the engines used on those trains and there has also been an increase in the equipment, the character of the equipment; that is, steel cars, and also trains 801 and 802 now carry a heavy dining car which they didn't carry at the time those trains run via Caruthersville?

A. Yes, sir; that is true.

Commissioner Bean:

(Q.) You mean to say they couldn't be run over the loop?

A. They could be at low speed.

Q. What rate of speed would you say?

A. Fifteen miles an hour.

Q. After all, isn't this a case, simply the operating management have taken the choice of keeping up six miles of track rather than sixteen, isn't that the case in a nutshell?

A. No, sir; it is not.

Q. Do you mean to say if this track around the loop had been in first-class condition those trains would have ever been diverted?

A. In my opinion it would, yes, sir; I think we must divert it to meet other conditions.

Q. To save thirty minutes?

A. Yes, sir.

Mr. Higgs: I just want to get this in the record.

Q. I will ask you if it wasn't to your knowledge that Mr. Levy, through his office, and Mr. Cornatzer, through his department, and all departments haven't contended, in an informal complaint by this city, the reason the trains were diverted was because of the fact you didn't have sufficient funds to keep up the track, and you couldn't run those trains over that track, and if it has been with your knowledge that Mr. Hilton has promised that so soon as he could

119 get money for the track it would be fixed and the trains diverted back over the track?

A. Not to my knowledge.

Q. And if that information has been put out to the citizens here or such representations were made to the Commission informally, it was without your knowledge and not true?

A. I didn't say it wasn't true; I said without my knowledge.

Q. Without your knowledge?

A. I don't know; they may have made those statements.

Q. Without your consent or the consent of the company?

A. I don't know; some of these gentlemen you have mentioned have authority greater than I have.

Commissioner Bean: When was this track from Grassy Bayou to Hayti constructed?

A. I don't know, Judge; it was constructed before I knew anything about it.

Q. It was put in first-class condition when it was built?

A. Well, it was put in as good condition as the rest of the main line.

Q. The line around the loop, when was that constructed?

A. I don't know; some years before.

Q. That being true, the line from Hayti to Grassy Bayou would need much less repair at this time than the line around the loop?

A. Yes, sir; that is in good condition.

Q. It could be kept up with much less expense than the line around the loop by reason of its recent construction?

A. Yes, sir.

J. N. CORNATZAR, recalled.

Mr. Stewart: Mr. Cornatzar, you stated when you were on the stand before, trains 801 and 802 did a through interstate business as well as local between St. Louis and Memphis?

A. That is true.

120 Q. Now, is it true that the Frisco competes with other lines between St. Louis and Memphis for through business?

A. Yes, sir.

Q. What effect, if any, would the lengthening of the schedule of trains 801 and 802 from 35 to 45 minutes have on the interstate business?

A. It would have a good deal of effect, as a matter of fact, the Illinois Central with a high local passenger business in Tennessee and Illinois are able to maintain a more superior service than we are attempting to maintain, because they can perform more local service to relieve the work of the through trains, which we are competing with on the west bank of the river, their trains go up the east bank of the river and they are four miles longer in line than we are, making practically the same mileage, and they are really competitive traffic; we certainly couldn't maintain the equipment or the club cars or the cafe cars on our trains between Memphis and St. Louis if we went out of the interstate traffic.

Mr. Higgins:

(Q.) Do you mean to say your company sales would show you average one through passenger on your day train from St. Louis to Memphis; do you think it would show that?

A. I couldn't say how many it shows; some days they have quite a few.

Q. Do you recall any day?

A. I can recall on a recent visit to Caruthersville when I got on 801 at Hayti I found seven or eight through people that went around Hayti; I knew a neighbor of mine coming from New York who came around by St. Louis.

Q. Do you want this Commission to understand 801 and 802 haul very many passengers from St. Louis to Memphis?

A. We don't haul as many as we would like to haul.

Q. Do you haul one-tenth as much as your night trains?

121 Isn't it a fact your night trains leaving those places are the ones that haul the people to St. Louis and Memphis, the ones you hold out and advertise?

A. That is our principal train service, because most of the business between Memphis and St. Louis is night traffic and that applies on nearly all long distance traffic between big commercial centers.

Q. Have you any way of showing for any given month how many passengers leave St. Louis and go directly through to Memphis?

A. I think we could get those figures if it had any bearing on this case at all.

Q. Will you furnish the Commission, we will say, with the month of January, 1915, the number of passengers that left St. Louis in the day time and arrived on 802?

A. If that can be gotten; I don't know how our traffic manager would view that information.

H. C. SHULT, being duly sworn, testified as follows:

Mr. Higgs:

(Q.) How long have you been living in Caruthersville?

A. Ever since 1892.

Q. I will ask you if you were acquainted with Mr. Yoakum before he left the service of the Frisco Railroad Company?

A. Yes, sir; I met him.

Q. I will ask you to state if he ever made any statement to you or within your presence or hearing with reference to the question whether trains would be diverted from this line to the cutoff line?

A. No, sir; he never made it in my presence.

Q. Never made it?

A. Not in my presence.

Q. You are familiar with trains 801 and 802; you make that trip quite often?

A. Yes, sir.

Q. I will ask you to state whether or not it is a busy train
122 so far as passengers are concerned in traffic between St. Louis direct and Memphis on the day train?

A. I have never noticed or met any one traveling direct from Memphis to St. Louis on the day train.

Q. Never have in all your travels?

A. No, sir.

Q. State what effect the cutoff, rather taking 801 and 802 off from what the merchants of this town have told you, what effect has it had with reference to the business in the town?

A. It has been very demoralized.

Mr. Whybark: You got on the train; you didn't run up and down and whisper in every man's ear and ask him where he was going?

Q. You just got on board and sat down?

A. Stared around a little bit.

Q. You didn't inquire of anybody else where they were going unless it was somebody you personally knew?

A. That is all.

Mr. Higgs:

(Q.) When 801 and 802 went by here I will ask you to state if it had the dining car it has now?

A. No.

Q. It had a dining car?

A. It didn't have the car it has got now.

Mr. Stewart: When you go on 801 and 802 you spend most of your time in the dining car?

A. Yes, sir.

J. W. SAWYER, being duly sworn, testified as follows:

Mr. Higgs:

(Q.) Mr. Sawyer, you are in business here?

A. Yes, sir; the truck business.

Q. I will ask you to state what effect has it had upon the merchants of this town since 801 and 802 has been diverted to the cutoff?

123 A. Well, it has demoralized our business, from the fact it keeps the people in the south end of the county from coming to our town.

Q. I will ask you what you have heard, whether you ever heard any complaint from your customers living in the south end of the county as to the schedule since it has been changed, the means of getting here?

A. I have.

Mr. Whybark:

(Q.) You said business has been demoralized, what demoralized it, the railroad or the bad times?

A. We haven't had hard times very long down here.

Q. What is cotton going at now?

A. I haven't inquired about it.

Q. Sir?

A. I don't know.

Q. What was it going at three months ago?

A. Two or three months ago?

Q. Yes.

A. I couldn't just say that either.

Q. Isn't it a fact they have been preaching "Buy a bale of cotton" all down here?

A. I have heard of that; yes, sir.

Q. Isn't it a fact business has been dull for the reason there has been no market for cotton?

A. That had something to do with it.

Q. Sir.

A. I think that had something to do with the business.

Q. Nothing to do with business?

A. I think it has.

Q. Well, did you have anything else to sell?

A. Anything else?

Q. Yes, besides cotton?

A. I don't sell cotton.

Q. Did the people have anything else to sell; you are talking about the people now; did they have anything else?

A. Yes, I think so; yes, sir.

Q. What else?

A. We raised corn.

Q. They sell that, do they?

A. I suppose they do.

124 Q. Now, what about this factory down here that has moved away, or is going to move away?

A. What factory?

Q. The Caruthersville Cooperage?

A. I see it is here now; I don't know what it is going to do.

Q. You haven't heard them say they were going to move?

A. I heard it was.

Q. Wasn't it in the papers it was going to move?

A. I didn't see it.

Mr. Higgs: You do know that when this train was run by her that business was better than it was after the taking off?

A. Yes, sir.

Mr. Higgs: I believe that is our case. I want to recall Mr. Reynolds for one question if he gets here.

Mr. Whybark: We have a blue print we will file as an exhibit if Mr. Higgs will admit that is correct.

Mr. Higgs: I don't know whether that is correct or not.

Mr. Whybark: We can offer proof by Mr. Claiborne.

Mr. Higgs: If Mr. Claiborne says it is, all right.

Mr. Claiborne: That is a correct map; it was made by our engineering department.

Mr. Whybark: It is for the purpose of showing the physical relation of these towns to the railroad.

Mr. Higgs: I would like to get this in the record: Comes now the complainant and prays the Commission that inasmuch as one of the points to be determined is at variance in this matter that the Commission require their expert to make an investigation himself as to the actual difference between the time it would take this train, that is taking into consideration his experience, to make the loop, with new steel, and in its present condition and make a report of the time

I think that is the real thing here in this case. Now, the city has no way to tell except by people that are not experienced in that; just as was done in the telephone case, they had their telephone expert look over the ground. I think the Commission's expert could do that, which should be taken together with the statements of the witnesses that have testified for the railroad.

Commissioner Bean: I don't think they will do that; I will make a report and file it with the case.

Whereupon, the hearing in the above case was closed.

Afterwards, on the 15th day of November, 1915, and during the November, 1915, Term of said court, to which day and term said cause had been continued by an order of record, the Court rendered and caused to be entered judgment therein affirming the order of the said Public Service Commission of the State of Missouri, being the order under review in this cause.

The order of the Commission affirmed by the judgment of said Circuit Court, said judgment of affirmance being a part of the record filed in this Court, is as follows:

Order.

This case being at issue upon complaint and answers on file, and duly coming on for hearing on due notice given according to law, and all parties having appeared by their respective attorneys at such hearing held before Commissioner Edwin J. Bean at Caruthersville, Missouri, on the 29th day of January, 1915, which was held in pursuance of an order of said Commission, at which hearing all the evidence presented by the parties was taken and heard according to law, and all the proceedings having been reported to the full Commission and submitted thereto for decision, and the Commission having duly considered the same, has made a report of its findings of fact and conclusions of law, which are filed herewith and made a part hereof as fully as if incorporated herein. And the Commission now being fully advised of and concerning the premises, it is

Ordered: 1. That the Commission doth find that the passenger train service as now furnished by the defendants, James W. Lusk, W. C. Nixon and W. B. Biddle, receivers of the St. Louis & San Francisco Railroad Company, and the St. Louis & San Francisco Railroad Company, on the said railroad to the public at the City of Caruthersville, in the State of Missouri, is inadequate and insufficient to reasonably promote the convenience of the public and secure adequate service and facilities for the transportation of passengers going to and from the said City of Caruthersville; and the Commission doth further find that it is necessary to secure adequate service and facilities for the transportation of passengers to and from said city, that the defendants route their passenger trains Nos. 801 and 802 through the City of Caruthersville and that the said trains stop and receive and discharge passengers at the defendants' passenger

depot at said city, and that such a change in the routing of said trains wholly within this State ought reasonably to be made to promote the convenience of the public.

Ordered: 2. That the defendants, James W. Lusk, W. C. Nixon and W. B. Biddle, receivers aforesaid, and St. Louis & San Francisco Railroad Company, on and after the 2nd day of August, 1915, maintain and operate daily passenger train No. 801 by way of the City of Caruthersville, and stop said train at the depot at said city 127 for the purpose of receiving and discharging passengers thereat. That said defendants are hereby required to change the route of said train No. 801 as now operated in the State of Missouri in the following particular: that said train, instead of being operated from Hayti, Missouri, directly to Grassy Bayou, in said State, shall be operated by the defendants from said Hayti to Caruthersville, Missouri, and thence to said Grassy Bayou, which route as changed is wholly within this State.

Ordered: 3. That the defendants, James W. Lusk, W. C. Nixon and W. B. Biddle, receivers aforesaid, and St. Louis & San Francisco Railroad Company, on and after the 2nd day of August, 1915, maintain and operate daily passenger train No. 802 by way of the City of Caruthersville and stop said train at the depot at said city for the purpose of receiving and discharging passengers thereat. That said defendants are hereby required to change the route of said train No. 802 as now operated in the State of Missouri in the following particular: that said train, instead of being operated from Grassy Bayou, Missouri, directly to Hayti, Missouri, shall be operated by the defendants from said Grassy Bayou to Caruthersville, Missouri, thence to Hayti, which route as changed is wholly within this State.

Ordered: 4. That this order shall be in full force and effect on and after the 20th day of June, 1915, and thereafter until set aside or modified by order of the Commission.

Ordered: 5. That defendants notify the Commission on or before the 20th day of June, 1915, whether the terms of this order are accepted and will be obeyed.

(The opinion of respondent in the case of Byrd et al. v. Appellants is set out herein in the appendix.)

Afterward, on the day and at the term last aforesaid, to-wit, 128 on the 15th day of November, 1915, and within four days after the rendition of said judgment, order and decree, plaintiffs duly filed their motion for a new trial and their motion in arrest of judgment in the cause, which said motions are in words and figures as follows (caption and signatures being omitted):

Plaintiffs' Motion for a New Trial.

Come now the plaintiffs and move the Court to set aside the judgment heretofore rendered in this cause and to grant them a new trial herein for the reasons following:

First. Because the finding and judgment are against the law.

Second. Because the finding and judgment are against the evidence.

Third. Because the finding and judgment are against the law and the evidence, and are against the weight of the evidence.

Fourth. Because the finding and judgment should have been for the plaintiffs.

Fifth. Because the Court erred in affirming the order entered by defendant in the cause.

Sixth. Because the Court erred in its finding and judgment in requiring plaintiffs to re-route their trains Nos. 801 and 802 by way of Caruthersville, Missouri, and in affirming the order of defendant in that respect.

Seventh. Because the Court erred in its finding and judgment in requiring plaintiffs to cause said trains Nos. 801 and 802 to go by and stop at Caruthersville, Missouri, for the purpose of receiving and discharging passengers, and in affirming defendant's order in that respect.

129 Eighth. Because the finding and judgment of the Court in requiring plaintiffs to re-route said trains Nos. 801 and 802, and in requiring said trains to enter and stop at Caruthersville, Missouri, and the order of defendant in that respect, are unreasonable and void.

Ninth. Because the finding and judgment requiring plaintiffs to re-route said trains to go through the City of Caruthersville aforesaid, and in affirming the order of defendant in that respect, are in conflict with Section 8 of Article I of the Constitution of the United States, in directly burdening interstate commerce, contrary to the provisions of said section giving to Congress the power to regulate commerce among the several States.

Tenth. Because the finding and judgment in requiring said trains to be re-routed by way of Caruthersville aforesaid, and in affirming the order of defendant in that respect, are confiscatory, take the property of plaintiffs without due process of law, and deny to plaintiffs the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and of Section 30, Article II, of the Constitution of Missouri.

Eleventh. Because under the law of this State defendant had not and has not jurisdiction or authority to make and enter an order requiring plaintiffs to re-route their interstate trains running through this State.

Twelfth. Because upon the entire record it appears that the passenger service afforded by plaintiffs for the said City of Caruthersville is adequate and sufficient.

Thirteenth. Because the law creating the Public Service Commission, known as the Public Service Commission Law, is unconstitutional and void, in that it contains more than one subject which is not clearly expressed in its title, in violation of Section 28, Article 4, of the Constitution of Missouri; and also because the powers attempted to be granted to said Public Service Commission under said law are unconstitutional encroachments by the Legislature upon the judicial branch of the government of this State, and especially in violation of Section 1, of Article 6, of the Constitution of Missouri.

Plaintiff's Motion in Arrest of Judgment.

Come now the plaintiffs and move the Court to arrest the judgment herein, for the reason and upon the grounds following:

First. Because on the entire record the finding and judgment should have been for the plaintiffs.

Second. Because the defendant was without authority or jurisdiction to make the order entered in this cause.

Third. Because the finding and judgment and the order of defendant tend to, and do, directly burden and obstruct interstate commerce in violation of the provisions of Section 8, of Article 1, of the Constitution of the United States.

Fourth. Because the finding and judgment and the order of the defendant herein deprive plaintiffs of their property without due process of law, and deny to them the equal protection of the laws, in violation of Section 1, of the Fourteenth Amendment to the Constitution of the United States, and of Section 30, of Article 2, of the Constitution of Missouri.

Afterwards, on the 16th day of November, 1915, and during the November Term, 1915, of said Court, said motions for new trial and in arrest of judgment were taken up by consent of the parties, and the same, and each of them, were by the Court, by an order then and there entered of record, overruled; to which action of the Court in overruling said motions, and each of them, plaintiffs, by their counsel, then and there duly excepted.

Afterward, on the same day and at the same term last aforesaid, plaintiffs filed their affidavit and application for appeal to the Supreme Court of Missouri, and an appeal was duly allowed to the Supreme Court of Missouri by an order then and there entered of record.

Afterward, on the same day and at the same term, plaintiffs filed their cost bond on appeal in the sum of \$500.00, and the same was by the Court, by an order entered of record, duly approved and filed.

In order that the above matters and things, rulings and exceptions

may be made a part of the record in this cause, the plaintiffs here present their bill of exceptions and pray that the same may be approved, signed, sealed, filed and made a part of the record herein; which is accordingly done this 16th day of November, 1915, and during the November Term of said Court.

J. G. SLATE,
Judge of the Circuit Court,
Cole County, Missouri.

Submitted by

W. F. EVANS,
E. T. MILLER,
A. E. HAID.

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APPENDIX.

Report of the Commission.

BEAN, Commissioner:

I.

The complaint challenges the adequacy of the passenger train service as furnished by defendants at Caruthersville, Missouri. The defendant company and the receivers have filed separate answers. The evidence was heard before a member of the Commission at Caruthersville on the 29th day of January, 1915. The case was thereafter argued by counsel for the parties hereto before the Commission and submitted for final decision without filing briefs.

The specific relief sought by complainants is that the Commission order the defendants to route passenger trains Nos. 801 and 802 through Caruthersville; that the schedule of the local passenger train between Kennett, Missouri, by way of Caruthersville and Memphis, Tennessee, be restored, and that an order be made prohibiting the backing of any and all passenger trains in and out of Caruthersville. The complaint against backing passenger trains in and out of Caruthersville was abandoned at the hearing.

Complainants objected to the schedule of the passenger train from Hayti to Memphis, which was formerly operated from Kennett to Memphis and return, because the train as now operated departed from Caruthersville one hour earlier and arrived at Memphis an hour later than under the old schedule. The delay in transit being apparently caused by taking the cars into another train at Turrell, in the State of Arkansas, when formerly the train from Kennett via Caruthersville went through to Memphis and returned to Kennett via Caruthersville. The chief grounds of objection, the failure to run the train through to Memphis and return, and the delay in connecting with another train at Turrell, Arkansas, seem to arise from the manner in which the train is operated in states other than the State of Missouri. The Commission has no authority to direct how the train in question shall be operated in another state, and complainants will be denied relief asked as to the train operated from Hayti, Missouri, to Memphis, Tennessee.

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II.

Caruthersville is the county seat of Pemiscot County and has about five thousand inhabitants. The defendants are erecting a new passenger depot at that city at a cost of twelve thousand dollars. As gathered from the evidence, the railroad facilities furnished at that place before the construction of the line from St. Louis to Memphis by the St. Louis & San Francisco Railroad were afforded by a line of railroad extending through Caruthersville to a point in Arkansas. This line was extended northward to St. Louis and south to Memphis, and was acquired by the defendant railroad company. About the year 1904 the entire railroad from St. Louis to Memphis was completed and opened for use. The line of railroad extending into Caruthersville makes a large curve toward the east. The distance in

134 a direct line between Grassy Bayou, which is on the railroad south of Caruthersville, and Hayti, which is north of Caruthersville, is six miles, while the distance along the railroad from Grassy Bayou to Caruthersville is nine miles, and from there to Hayti is seven miles. In 1904 the defendant railroad company constructed a railroad track from Grassy Bayou to Hayti; thus the distance between said points was shortened ten miles. The purpose of constructing the road between the points last named was, as avowed by the representatives of the railroad company, for use of the freight trains, and upon this assurance the citizens of Caruthersville assisted in procuring the right-of-way for the railroad between Grassy Bayou and Hayti, and donated a large part of it to the railroad company. Such consideration thus bestowed upon the railroad company cannot be made the basis for granting relief upon this complaint.

Trains Nos. 801 and 802 were, until August, 1913, routed from St. Louis to Memphis and return through Caruthersville. At the time last named said trains were routed over the short line from Grassy Bayou to Hayti, and a train has been operated between Hayti and Caruthersville to carry passengers to and from said trains Nos. 801 and 802 at Hayti, and passenger trains Nos. 825 and 826 have been put into service between Blytheville, Arkansas, and Cape Girardeau, Missouri, by way of Caruthersville, Hayti and Kennett.

E. D. Gillen, president of the Commercial Club at Caruthersville, testified that about one year before the hearing the officers and agents of the defendant company assured him that the trains would be run through Caruthersville again as soon as the track around the loop could be repaired; that on the 9th day of December, 1914, one
135 of the receivers assured the witness that the track would be repaired in the spring for the operation of trains by way of Caruthersville, and that the condition of the track was the only cause advanced by the defendants' officials against routing the trains in question through Caruthersville.

Defendants, at the hearing and at the argument before the Commission, contended that Caruthersville now has adequate passenger train service and that trains Nos. 801 and 802 as routed away from Caruthersville travel ten miles less between Grassy Bayou and Hayti;

that if routed through Caruthersville would lose forty-five minutes in time, which is necessary in order to make connections with other trains at both St. Louis and Memphis.

III.

The question arises as to the power of the Commission to make an order requiring defendants to change the routing of the trains, and also the question as to how far the Commission may direct the operation of the trains engaged in commerce between the states. Section 49 of the Public Service Commission Law provides:

"If, in the judgment of the commission, additional tracks, switches, terminals or terminal facilities, stations, motive power, or any other property, construction, apparatus, equipment, facilities or device for use by any common carrier, railroad corporation or street railroad corporation in or in connection with the transportation of passengers or property ought reasonably to be provided, or any repairs or improvements to or changes in any thereof in use ought reasonably to be made, or any additions or changes in construction
136 should reasonably be made thereto in order to promote the security or convenience of the public or employes, or in order to secure adequate service or facilities for the transportation of passengers or property, the commission shall, after a hearing, either on its own motion or after complaint, make and serve an order directing such repairs, improvements, changes or additions to be made within a reasonable time and in a manner to be specified therein, and every common carrier, railroad corporation and street railroad corporation is hereby required and directed to make all repairs, improvements, changes and additions required of it by any order of the commission served upon it."

Section 51 of the Public Service Commission Law is as follows:

"If, in the judgment of the commission, any railroad corporation or street railroad corporation does not run trains enough or cars enough or possess or operate motive power enough, reasonably to accommodate the traffic, passenger and freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at reasonable or proper time, having regard to safety, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the Commission shall, after a hearing, either on its own motion or after complaint, have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car or make any other suitable order that the Commission may determine reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation."

137 The foregoing statutes authorize the Commission to make an order changing the routing of a passenger train in this State when, in the judgment of the Commission, such a change ought reasonably be made to promote the convenience of the public or to secure adequate service and facilities for the transportation of passengers; as to how far that authority may be exercised over interstate trains will now be considered.

In the case of *Yancy v. Chicago & Alton Railroad Company*, 1 Mo. P. S. C., l. c. 627, the Commission held as follows:

"The jurisdiction of this Commission is challenged on the ground that the trains we are asked to control carry and are engaged in interstate commerce, and therefore under the exclusive jurisdiction of the Interstate Commerce Commission. This defense is without merit. Because a train carries interstate traffic, it does not follow that it is under exclusive Federal control. Practically all trains, whether passenger or freight, though or local, carry both kinds of commerce, state and interstate. That which is interstate is subject to Federal law and regulation, and that which is intrastate is subject to state control, even though both kinds of commerce are carried in the same train and car. The state is not without jurisdiction merely because the train may be carrying interstate passengers or freight. These propositions are elementary.

"Our jurisdiction is also attacked upon the further ground that trains over which we are asked to exercise control are interstate trains, and, therefore, under the sole jurisdiction of Federal law. The trains between Chicago and Kansas City are interstate trains, but those between St. Louis and Kansas City are not. The fact

138 that a train is interstate in character is a proper matter for consideration in determining our power to grant the relief sought in this case, but it is not conclusive. In the case of *Mississippi R. R. Co. v. Illinois Central*, 203 U. S. 335, the Court, discussing this subject, after citing a number of its former decisions (l. c. 344), said:

"Upon the principles decided in these cases, a state railroad commission has the right, under a state statute, so far as railroads are concerned, to compel a company to stop its trains under the circumstances already referred to, and it may order the stoppage of such trains if the company does not otherwise furnish proper and adequate accommodation to a particular locality, and in such cases the order may embrace a through interstate train actually running and compel it to stop at a locality named. In such case, in the absence of congressional legislation covering the subject, there is no illegal or improper interference with the interstate commerce right; but if the company has furnished all such proper and reasonable accommodation to the locality as fairly may be demanded, taking into consideration the fact, if it be one, that the locality is a county seat, and the amount and character of the business done, then any interference with the company (either directly by statute, or by a railroad commission acting under authority of a statute) by causing its interstate trains to stop at a particular locality in the state, is an improper and

illegal interference with the rights of the railroad company, and a violation of the commerce clause of the Constitution."

"That case is cited with approval in the more recent case of *Atlantic Coast Line v. Wharton*, 207 U. S. 328.

"The statutes of this State bearing upon the authority and
139 duty of this Commission and the duty of the carrier in the matter of furnishing adequate passenger service are the following:

"If, in the judgment of the Commission, any railroad corporation or street railroad corporation does not run trains enough or cars enough or possess or operate motive power enough, reasonably to accommodate the traffic, passenger and freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at reasonable or proper time having regard to safety, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the Commission shall, after a hearing, either on its own motion or after complaint, have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car or make any other suitable order that the Commission may determine reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation." (Sec. 51, P. S. C. L.)

"Whenever any railroad, run and operated in this State, shall fail to provide the traveling public at any of the stations along its line with proper and adequate service in the transportation of passengers, by day or night, caused by the failure of the railroad to stop its passenger trains at any such station, it shall be the duty of the Railroad and Warehouse Commissioners, when such matter shall have been duly brought before them, to require such company or companies to stop any and all such trains as in the judgment of the Commissioners may be necessary to provide the public, at any such station, with a reasonably convenient service in passenger transportation." (Sec. 3275, R. S. 1909.)

140 "Section 3100, R. S. 1909, requires every railroad company 'unless hindered by wrecks or Providential hindrance' to run at least one regular passenger train each way every day over its lines, which shall stop at all regular stations to receive and discharge passengers; and Section 3098, R. S. 1909, provides that all regular passenger trains shall, 'upon request made by any passenger, or any person desiring to become a passenger,' stop at its stations at all county seats within this State to take on and discharge passengers; 'Provided, however, that this section shall not apply to through railroad trains entering this State from any other state, or to transcontinental trains of any railroad.'

"From the foregoing except of the opinion of the Supreme Court of the United States, and the statutes mentioned, it appears that whether our authority to make the order prayed for be tested

upon the ground of its being an interference with interstate commerce, or by the statutes of this State, although the principles of law governing our action are different, the question presented is practically the same in either case, namely, whether the town of Armstrong is now furnished with reasonably adequate passenger service. If it is not, we should grant relief; otherwise, we should dismiss the complaint."

The cases were fully reviewed by the Supreme Court of Wisconsin in the case of Chicago, B. & Q. R. R. Co. v. Railroad Commission, 152 Wisconsin, 1 c, 664-670. The judgment in the above case was reversed by the Supreme Court of the United States. (Chicago, Burlington & Quincy Railroad Co. v. Railroad Commission. Advance Opinions of L. C. P. Co. of 15th day of May, 1915, pages 560-565.)

141 The right of a state to require adequate local facilities even to the stoppage or rearrangement of the schedules of interstate trains was, however, again affirmed. See case cited, *supra*, at page 562, and following.* The principle governing the right of the state to require the stoppage of interstate passenger trains applies to the right of the state either by statute or through a commission to change the routing of an interstate train between points wholly within this State, and hence the Commission may require the defendants to route trains Nos. 801 and 802 via Caruthersville if the defendants do not otherwise furnish proper and adequate service for the public in traveling to and from Caruthersville.

IV.

Defendants offered in evidence as Exhibit "A" a time table which sets forth the names of the stations and the time of arrival and departure of the passenger trains as now furnished by defendants, and also contains a map showing the location of the line of railroad between St. Louis and Memphis and the various branches connecting therewith. The railroad extends from St. Louis to Memphis, a distance of 305 miles, along the west side of the Mississippi river; Caruthersville is 220 miles south of St. Louis; a branch road extends toward the west from the main line at Hayti. Defendants operate two passenger trains each way daily over the main line between St. Louis and Memphis (Nos. 801-802 and 805-806).

Train No. 801 as now scheduled leaves St. Louis at 8 o'clock a. m., arrives at Hayti at five minutes after 4 o'clock p. m.,
142 arrives at Memphis ten minutes after 8 o'clock p. m. Train No. 802 as now scheduled leaves Memphis at forty-five minutes after 7 o'clock a. m., arrives at Hayti at forty-five minutes after 11 o'clock a. m., and at St. Louis at thirty-five minutes after 8 o'clock p. m. Under the old schedule via Caruthersville train No. 801 left St. Louis at the same time but arrived at Memphis thirty minutes later, and train No. 802 left Memphis thirty minutes earlier and arrived at St. Louis at the same time as under the new

*As modified on motion for rehearing.

schedule. Trains Nos. 801 and 802 contain a luggage car, mail car, coaches and dining car. Trains Nos. 805 and 806 are operated at night each way between St. Louis and Memphis. A Pullman car is attached to the night train leaving St. Louis and is carried to Hayti and thence to Caruthersville by another train. A Pullman car is carried from Caruthersville each night to Hayti and then attached to train No. 803 and carried to St. Louis. The night trains carry the greater part of all the passengers traveling on that line between St. Louis and Memphis and are devoted principally to through traffic. The average speed per hour of train No. 805 is 29.71 miles; the average speed per hour of train No. 803 is 29.81 miles.

Trains Nos. 801 and 802 are through trains, but are devoted primarily to local traffic. Each of said trains between St. Louis and Memphis makes fifty regular stops at stations and eleven stops on flag. The average speed per hour of train No. 801 is 25.36 miles; the average speed per hour of train No. 802 is 24.88 miles.

The following additional train service, wherein the equipment used is inferior to that on the through trains, and which may be called branch line service, is furnished at Caruthersville:

Defendants operate a passenger train (No. 281) daily from Hayti, via Caruthersville, to Memphis, leaving Caruthersville at ten minutes after 5 o'clock a. m., thence to Turrell, Arkansas, where the cars are placed in another train and carried to Memphis, and cars are carried from Memphis to Turrell, Arkansas, and from that point, as No. 822, are carried to Caruthersville, arriving there at 11 o'clock p. m. When trains Nos. 801 and 802 were diverted from Caruthersville, defendants put into service passenger trains Nos. 825 and 826, which are operated daily from Rhytheville, Arkansas, via Caruthersville, Hayti and Kennett, to Cape Girardeau and return, arriving at Caruthersville, going north, each day at 7:25 a. m. and returning via Caruthersville at 7 o'clock p. m. Defendants operate passenger trains Nos. 881 and 882, leaving Caruthersville as No. 882 at fifty minutes after 5 o'clock, thence to Hayti, Kennett and Cape Girardeau by way of the Leachville branch, and returning to Caruthersville as No. 881 at five minutes after 9 o'clock p. m. A passenger train is operated as trains Nos. 893-894-895-896-897-898-899-900 between Campbell, Kennett and other points to Hayti and Caruthersville. That train carries all passengers to and from trains Nos. 801 and 802 between Caruthersville and Hayti. Train No. 802 as now scheduled arrives at Hayti at forty-five minutes after 11 o'clock a. m. Passengers coming from Caruthersville to take that train leave Caruthersville at fifteen minutes after 11 o'clock a. m., and that train is due to arrive at Hayti at forty minutes after 11 o'clock and is due to arrive at Caruthersville from Hayti at twenty minutes after 12 o'clock. Train No. 801 is due to arrive at Hayti at five minutes after 4 o'clock p. m.

The train to meet this train at Hayti leaves Caruthersville at thirty minutes after three p. m. and arrives at Hayti at fifty-five minutes after 3 o'clock p. m. and returns to Caruthersville at forty minutes after 4 o'clock p. m. As trains Nos. 801 and

802 are now operated, all passengers going to and from Caruthersville are required to change to or from the said main line at Hayti.

As compared with the service when said trains were routed via Caruthersville, passengers now going north from Caruthersville on No. 802 leave that station at the same time; passengers coming to Caruthersville arrive there about one hour later and travel four miles farther than when the train came via Caruthersville. Passengers leaving Caruthersville going south on train No. 801 now leave that station one hour earlier than formerly and are carried four miles farther, and when coming to Caruthersville on train No. 801 arrive there at forty minutes after 4 o'clock p. m. Under the old schedule train No. 801 was due to arrive at Caruthersville at about the same time.

In case the trains are routed through Caruthersville, passengers traveling beyond that point will be carried a distance of ten miles farther and subjected to the payment of increased fares to that extent and will be delayed in transit thirty or forty minutes, while on the other hand all passengers going to and from Caruthersville will leave the main line train at Hayti to take the train to Caruthersville, and all passengers going south or to Caruthersville from the south will be carried four miles farther by way of Hayti than if carried over the old route and may* be subjected to increased fares for that distance, and delays incident to the branch line service afforded between Hayti and Caruthersville.

The evidence offered by defendants tending to show the necessity for diverting the trains from Caruthersville in order to make
145 connections at St. Louis and Memphis has been considered, and it is very indefinite as to the number of passengers to be accommodated. The only changes in the schedules are that train No. 802 leaves Memphis thirty minutes later and No. 801 arrives there thirty minutes earlier.

Defendants claim that it is necessary that train No. 801 connect with a train leaving the same station at Memphis at 9 o'clock via the Frisco Lines for Birmingham, Atlanta, Washington and New York. Under the old schedule train No. 801 was due at Memphis at forty minutes after 8 o'clock p. m., leaving twenty minutes to change from on train to the other. Connection with trains leaving Memphis over the Louisville & Nashville Railroad is claimed by defendants to be important, and which trains are due to leave at twenty minutes after 8 o'clock p. m. from a depot situate four blocks from the depot at which the train No. 801 arrives at Memphis.

Defendants operated these trains through Caruthersville for nine years and other reasons for changing the route of the trains have been assigned by defendants' officers. It is deemed that such claims of necessity for routing the trains away from Caruthersville do not outweigh the requirements for adequate local service at that place, which it is the primary duty of the defendants to furnish.

Caruthersville is the second city in importance on defendants' line between St. Louis and Memphis, and the ticket sales are only exceeded by the sales at Cape Girardeau. Defendants' station agent at

Caruthersville testified that he sold more than seven thousand tickets each month to passengers traveling out of that station; that the total receipts for said sale were about \$4,000 and the receipts at 146 said station from freight business amounted to \$18,000 each month; that sixty-five per cent of said tickets were sold to passengers traveling wholly within this State; that the average number of interstate passengers each day going out of Caruthersville on train No. 802 at Hayti is from fifteen to thirty, and they are usually going to Portageville, Sikeston, St. Louis and Cape Girardeau; that about seventy-five tickets were sold each day to passengers going from Caruthersville to Steele and Holland, which are in this State south of Caruthersville, each having more than one thousand inhabitants. Elwood Scott, City Marshall, testified that when trains Nos. 801 and 802 ran through Caruthersville that as many as fifty passengers came to Caruthersville each day from the south part of the county, and the like number departed from Caruthersville for the south part of the county.

Caruthersville is situate on the line of railroad as it was originally located. Defendants acquired the railroad and trains Nos. 801 and 802 were operated through the city for nine years. The testimony tends to show that the merchants of the city enjoyed a large trade from persons residing in the south part of the county who were carried to and from the city on said trains, and that the change in the manner and time of operating the trains has caused many of their patrons to cease coming to the city, and a large loss in the amount of business from that source has resulted.

Adequacy of passenger service is not to be determined wholly by the number of trains in service, but their equipment, manner and time of arrival and departure from stations are important factors. The train service as now afforded the public at Caruthersville is 147 branch line service both as to equipment (except the Pullman service) and manner of operating the trains. The requirement that all passengers on trains Nos. 801 and 802 to and from Caruthersville change trains at Hayti is an inconvenience to which the public should not be subjected. Taking into consideration the locality to be served and the amount and character of the business to be done by the defendants at Caruthersville, it is held that the passenger train service as now furnished the public at that place is inadequate, and that to accommodate the passengers to and from Caruthersville it is reasonably necessary to route said trains Nos. 801 and 802 by way of its depot at Caruthersville and to receive and discharge passengers therefrom at that place.

An order will be entered in accordance with the foregoing as the evidence disclosed the necessity for repairing the track on the old route from Grassy Bayou to Hayti; sixty days is deemed to be a reasonable time for compliance therewith. All concur.

Motion for Rehearing.

I.

Because the opinion as modified is erroneous in holding that (p. 5):

"The foregoing statutes (Secs. 49 and 51 of the Public Service Commission Law) authorize the Commission to make an order changing the routing of a passenger train in this State, when, in the judgment of the Commission, such a change ought reasonably be made to promote the convenience of the public or to secure adequate service and facilities for the transportation of passengers."

Section 49 relates exclusively to repairs or changes in facilities and does not vest in the Commission the power to change the routing of trains. It refers to additional tracks, switches, terminals or terminal facilities, stations, motive power or any other property, construction, apparatus, equipment, facilities or device for use by any common carrier * * * or any repairs or improvements to or changes in any thereof. The power granted to the Commission by that section is to order repairs, improvements, changes or additions to be made.

Section 51 relates merely to changes in time schedules and running additional cars and trains, and vests in the Commission the power to require the carrier to increase the number of its trains, cars or motive power, or to change the time for starting its trains or change time schedules for running trains, and to make other suitable orders in connection therewith.

It will be seen that neither of those sections gives to the Commission the authority to make an order directing a change in
149 the routing of trains, and such authority is not elsewhere in the Public Service Commission Act vested in the Commission.

II.

Said opinion is erroneous in holding that (p. 7):

"The principle governing the right of the State to require the stoppage of interstate passenger trains applies to the right of the State either by statute or through a Commission to change the routing of an interstate train between points wholly within this State, and hence the Commission may require the defendants to route trains Nos. 801 and 802 via Caruthersville if the defendants do not otherwise furnish proper and adequate service for the public in traveling to and from Caruthersville."

The Commission quotes from the case of *Yancy v. Chicago & Alton Railroad Company*, 1 Mo. P. S. C. R., l. c. 627. That case involved the right of the Commission to require passenger trains

to stop at certain towns in the State, and the jurisdiction of the Commission over that subject was attacked. The Commission held that it had jurisdiction for that purpose upon the authority of the Wharton case in the 207 U. S. 328. Numerous cases have been decided holding that the State has authority where a railroad company does not furnish adequate train service at points within the State to require interstate trains to stop at such stations. That is not the question involved in this case.

The case of *C. & Q. R. R. Co. v. Railroad Commission of Wisconsin*, 152 Wis., 1. c., 664 to 670, 140 N. W. 296, which has been reversed by the Supreme Court of the United States, deals with the same subject discussed in the Wharton case, and contains no
150 suggestion that the Commission of that State had authority to change the routing of trains. The line of cases does not afford any authority for the conclusion reached by the Commission in this case that it has the authority to change the routing of trains within this State. That is a matter that should be left, as this Commission has practically decided in the case of *Gustin v. these defendants* (1 Mo. P. S. C. 232), to the judgment of the carrier, leaving to the Commission, however, the power and authority where the necessity demands for requiring additional service, whether in the nature of stopping trains or putting in service additional trains.

III.

The order of the Commission is in violation of Sec. 8, Art. I of the Constitution of the United States, wherein Congress is vested with the power "to regulate commerce with foreign nations, and among the several States and with the Indian tribes."

Trains Nos. 801 and 802 are interstate trains running from St. Louis, Missouri, to Memphis, Tennessee. They are engaged in commerce among the several States. The Commission may have authority under certain circumstances to require these trains to stop at stations where adequate train service is not provided. That right arises out of the police power of the State, and is for that reason recognized by the Federal Government. These trains are interstate trains, and, quoting from the Yancy opinion, "that which is interstate is subject to federal law and regulation".

The defendants have been unable to find a single case in which irrespective of the character of the train, whether intrastate or interstate, the courts have held that a Commission has the author-
151 ity in the absence of a requirement in the charter of the railroad company to require a railroad company to change the route over which it will run its trains, and to designate a specific route over which they shall be run.

IV.

Said opinion is erroneous in holding that (p. 9) :

"Trains Nos. 801 and 802 are through trains, but are devoted primarily to local traffic."

The interstate or through traffic handled by these trains is of equal importance with State or local traffic; the interstate traffic consists of passengers, mail and express to and from the State of Missouri through the City of St. Louis; passengers, mail and express between points in Missouri and Arkansas, and passengers, mail and express to and from points in Arkansas, Memphis, Tenn., and other points in States east of the Mississippi River through Memphis.

V.

Said opinion is erroneous in holding that p. 11) passengers traveling to and from the South by way of Hayti to Caruthersville on train 802 are subjected to increased fares.

Equal rates now apply between Caruthersville and points south of Hayti via Hayti as are made by the shorter line via Grassy Bayou.

VI.

Said opinion is erroneous in holding that (p. 12):

"It is deemed that such claims of necessity for routing the 152 trains away from Caruthersville do not outweigh the requirements for adequate local service at that place, which it is the primary duty of the defendants to furnish."

It is the primary duty of this carrier to arrange its service with due regard to the convenience of the majority of the people served by its lines; the through or interstate travel and the State travel between points north of Hayti and points south of Hayti in both directions greatly outweighs the importance of travel between Caruthersville and main-line points in both directions; the length of time necessary for this travel to detour via Caruthersville, and the excess rate to be paid to compensate the carrier for the extra mileage is a greater hardship than the slight inconvenience of changing cars occasioned Caruthersville passengers.

Said opinion is in conflict with the general practice of operating trains to and from branch line points and points on the main line of a railroad; it is the universal practice to operate trains via the main or short line in the interest of time, safety and convenience of the public, supporting connecting trains from branches for convenient connection at junctions.

VII

Said opinion is erroneous (pp. 12 and 13) in basing the necessity for routing trains Nos. 801 and 802 via Caruthersville upon the fact that Caruthersville is the second city in importance on defendants' line between St. Louis and Memphis.

It is submitted that the importance, population or traffic of one city should not be permitted to govern service against the necessity and convenience of a number of other cities or towns even of lesser population.

Said opinion is erroneous in holding that (pp. 13 and 14) :

"Adequacy of passenger service is not to be determined wholly by the number of trains in service, but their equipment, manner and time of arrival and departure from stations are important factors. The train service as now afforded the public at Caruthersville is branch-line service both as to equipment (except the Pullman service) and manner of operating the trains. The requirement that all passengers on trains Nos. 801 and 802 to and from Caruthersville change trains at Hayti is an inconvenience to which the public should not be subjected. Taking into consideration the locality to be served and the amount and character of the business to be done by the defendants at Caruthersville, it is held that the passenger train service as now furnished the public at that place is inadequate and that to accommodate the passengers to and from Caruthersville it is reasonably necessary to route said trains Nos 801 and 802 by way of its depot at Caruthersville and to receive and discharge passengers therefrom at that place."

Caruthersville is now served with adequate passenger service; two trains a day in each direction are operated between Caruthersville and main-line points.

Train 821 leaves Hayti 4:55 a. m., operating via Caruthersville, leaving that point 5:20 a. m., running through to Memphis, serving passengers from Caruthersville to all points south of Caruthersville in Missouri and Arkansas and Memphis, Tenn.

154 Train 822 leaves Turrell, Ark., 6:30 p. m., having a connection out of Memphis, Tenn., a 5:15 p. m., stopping at all stations between Turrell and Caruthersville, arriving at the latter city 9:50 p. m. and Hayti 10:15 p. m.

Train 286 leaves Blytheville 6:05 a. m., operating via Caruthersville and Hayti to Cape Girardeau, reaching Caruthersville 7:25 a. m. and Cape Girardeau 11:30 a. m.

Train 285 leaves Cape Girardeau 3:10 p. m., operating via Caruthersville to Blytheville, reaching Caruthersville 7:05 p. m. and Blytheville 8:30 p. m.

It will be seen that train 826 north bound is adapted to local shopping traffic from Blytheville and points north to Caruthersville and that train 825 is so adapted to return this local traffic from Caruthersville to points south at a convenient hour.

In addition to these through continuous main-line trains via Caruthersville,

Train 894 leaves Caruthersville 11:15 a. m., arrives Hayti 11:40 a. m., connecting with train 802, passing Hayti 11:50 a. m., delivering passengers to that train from Caruthersville.

Train 895 leaves Hayti 11:55 a. m., taking passengers from that train back to Caruthersville, reaching there 12:20 p. m.

Train 896 leaves Caruthersville 3:30 p. m., reaching Hayti 3:55

p. m., connecting with train 801, passing through Hayti 4:10 p. m., delivering passengers from Caruthersville to that train.

Train 97 leaves Hayti 4:15 p. m., taking passengers from 801 back to Caruthersville.

Train 822 leaves Caruthersville 5:50 a. m., operating through Hayti-Kennett, Gibson, Clarkton and Brooks Junction to Cape Girardeau, reaching the latter point 12:45 p. m.

Train 881 leaves Cape Girardeau 2:10 p. m., operating via Brooks Junction, Clarkton, Gibson and Kennett, reaching Caruthersville 9:05 p. m.

Train 892 leaves Gibson 6:30 a. m., operating via Kennett with a side trip to Leachville, reaching Caruthersville 11:05 a. m.

Train 898 leaves Caruthersville 4:50 p. m., arrives Kennett 6:00 p. m., making side trip to Senath, reaching Gibson 7:33 p. m.

Train 892 leaves Caruthersville 12:30 p. m., arrives Kennett 1:45 p. m.

Train 891 leaves Kennett 1:50 p. m., arrives Caruthersville 3:20 p. m.

From the above it will be seen that Caruthersville is served by a total of fourteen (14) passenger trains. The hours of service and routing of trains are arranged for the convenience of the entire territory.

The Commission in its case No. 144, *J. D. Gustin v St. Louis & San Francisco Railroad and W. B. Biddle et al.*, Receivers, rules as follows:

"But we may add that this Commission is not disposed to interfere in adjustments pertaining to the actual operation and management of the railroads, or in the details thereof, in the absence of satisfactory evidence of inadequacy or discrimination.

"There are things that should normally be left to be worked out by the roads themselves. It may be commendable for citizens of localities to strive for the betterment of the service as it affects their respective communities. But it must also be remembered that railroad schedules and plans, in connection with an extensive system such as is operated by the defendants, must be made by adjustment to the entire system, as a unit, and with reference to a multitude of cities and towns, and adapted to a multitude of complex considerations, which render it impossible to single out the particular service that otherwise might be given each separate town."

The defendants therefore pray that their motion for rehearing be granted, and that the order herein made be set aside and the complaint be dismissed.

157 And afterwards, to-wit, on the 11th day of January, 1918, the following further proceedings were had and entered of record in said cause, to-wit:

In the Supreme Court of Missouri.

Court in Banc.

(No. 19,319.)

JAMES W. LUSK et al., Receivers, etc., Appellants,

VS.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent.

Now at this day the resignation of Hon. Peyton A. Parks, as special judge herein, is accepted by the court, and it is now ordered by the court, upon agreement of the parties, that Hon. Henry Lamm, of Sedalia, be, and he is hereby, appointed special judge, to sit with the court in this cause, and give decision in the same manner and with the same effect as one of the judges.

And afterwards, on the 23rd day of January, 1918, the following further proceedings were had and entered of record in said cause, to-wit:

(No. 19,319.)

JAMES W. LUSK et al., Receivers, etc., Appellants,

VS.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent.

Now at this day the court doth order that this cause be set for hearing on Saturday morning next, January 26, 1918.

158 And afterwards, on the 26th day of January, 1918, the following further proceedings were had and entered of record in said cause, to-wit:

(No. 19,319.)

JAMES W. LUSK et al., Receivers, etc., Appellants,

VS.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent.

Come now the said parties, by attorneys, and after arguments herein submit this cause to the Court; Hon. Henry Lamm, special judge, sitting with the judges of the Court in the hearing of said cause.

And afterwards, on the 15th day of March, 1919, the following further proceedings were had and entered of record in said cause, to-wit:

JAMES W. LUSK, WILLIAM C. NIXON, and WILLIAM B. BIDDLE,
Receivers of the Railroad and Property of the St. Louis and San
Francisco Railroad Company, Appellants,

VS.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent.

Appeal from the Circuit Court of Cole County.

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Cole County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellants costs and charges herein expended and have therefor execution.

(Opinion filed.)

And on the same day, to-wit, the 15th day of March, 1919, and during the Regular October Term, 1918, of said Supreme Court there was filed the opinion of said Supreme Court in said cause, which said opinion is in the words and figures following:

150 In the Supreme Court of Missouri, October Term, 1918.

No. 19319. In Banc.

LUSK, NIXON & BIDDLE, Receivers of the Railroad and Properties
of the St. Louis and San Francisco Railroad Company, Appel-
lants,

VS.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent.

A statement of the facts pertinent to the decision of questions raised on this appeal will appear in connection with rulings on those questions. However, it has seemed sensible to fetch a small compass by way of an outline of the case in limine, to the end that it may have an understandable setting for discussion; thus:

The Mayor and Aldermen of Caruthersville, on behalf of that city and its people (and *virtute officii*), filed a complaint with respondent commission of three specifications, in substance, to-wit:

First. It was charged that appellants, unmindful of the safety of the people, operate certain passenger trains into and out of Caruthersville by backing them. (After complaint filed, this method of train operation was discontinued, as we gather, hence the foregoing was abandoned at the hearing and will not be further noticed.)

Second. It was charged that a certain local passenger train, operating from Kennett, Missouri, to Memphis, Tennessee, via Caruthersville, was run on a schedule creating unnecessary lay-overs, inconveniences and reductions of traffic. (The grievances complained of in this specification seem to relate to conditions in Arkansas, hence the finding of respondent commission was against complainants thereon, and, as no appeal was taken by the Mayor and Board of Aldermen, it drops out of the case and will not be further noticed.)

Third. It was charged (and on this charge the live issues seem to hang) that certain day trains between St. Louis and Memphis, known as 801 and 802, no longer stopped at Caruthersville but were diverted through a cut-off, to the inconvenience, loss and injury of the business and inhabitants of said city. That said failure to stop there was without meritorious cause, etc. Complainants prayed an order requiring said trains to run into and stop at Caruthersville as they had formerly done, thereby correcting the alleged wrongs.

It seems the railroad company itself was made a party defendant, together with said receivers, in the original proceedings before the commission. Accordingly, on the coming in of said complaint, the railroad company filed its separate answer setting up the fact that its co-defendants were acting as receivers under the appointment of the United States District Court for the Eastern Division of the Eastern District of Missouri; and that since their appointment said receivers have had full possession and operative control of its railroad and properties.

By their answer, the receivers denied the charges made in the complaint, admitted they had charge of and were operating the road and its properties and that they had in August, 1913, discontinued the operation of trains 801 and 802 by the way of Caruthersville for the purpose, they allege, of reducing expenses and making connections at St. Louis and Memphis, and they further averred that they are furnishing reasonable passenger facilities to Caruthersville.

On issues thus joined a hearing was had before respondent commission, on testimony taken and duly preserved, with the result that the commission found in favor of the complainants as to said trains 801 and 802, that the passenger service at Caruthersville was insufficient and inadequate and an order was passed and served on appellants in effect to run said two passenger trains through Caruthersville and stop them at the depot there to receive and discharge passengers and their baggage, and appellants were given until August 2nd, 1915, (about six months) to comply with such order. (Vide *Byrd et al vs. St. Louis & San Francisco Railroad Company, J. W. Lusk, W. C. Nixon and W. B. Biddle, Receivers, 2 P. S. C. R. 430*).

Denied a re-hearing, appellants in salutatory form sued out a writ of certiorari, in the Cole circuit court. On a new hearing in that court, on the same record before the commission, it was adjudged that the order of respondent commission be affirmed. From 161 that judgment, on due intermediate steps taken, the cause came up on appeal to this Court, was heard first in Division and then in Banc with a special Judge on the bench in place of Judge Faris, who declined to sit.

The case was submitted in Banc on the admission that in due time appellants complied with the order and are now running and ever since the time limited in the order have run said trains in compliance therewith.

Recognizing that refusing to stop day trains 801 and 802 at Caruthersville and that by re-routing them through the cut-off, aforesaid, and leaving that city to one side, would seriously affect the convenience of its inhabitants and of the passengers destined to or from that point and the business of the city, appellants attempted to remedy the inconvenience and loss of facilities in ways that will appear later or when a statement of the facts is made and when the reasonableness of the order is up for judgment. So the facts relating to the inconvenience and loss to Caruthersville and its people and the traveling public by the substituted scheme of appellants, abrogated by the order of the commission under review, will be sufficiently set forth.

On a record thus briefly outlined, learned counsel for appellants argue the judgment of the circuit court, affirming the order of the commission, should be reversed; because, they say:

First. As to the railway company itself the order was error for that the receivers, not the company, operated the railroad when the complaint was filed.

Second. The court exceeded its power in affirming an order re-routing trains 801 and 802.

Third. The order of the commission, affirmed by the court, was arbitrary, unjust and unreasonable (and herein of the reasonableness and adequacy of the passenger train service existing at the 162 time and of certain constitutional questions sprung.)

Fourth. Such order was void for that it interfered with interstate commerce by impinging on named constitutional guaranties in that behalf.

Of these in their order.

I.

Of the alleged error in the inclusion of the St. Louis and San Francisco R. R. Co. in the order of the commission and the judgment affirming the same.

Appellants assign error for that the Railroad Company was included in the order when, as here, the road and its properties were in

the hands of receivers. The assignment justifies the following observations:

(a) While it is clear from the abstract that the railroad company was a party below and was affected by the order and judgment, yet it is far from clear whether the company did or did not appeal jointly with the receivers. There are indicia in the record (as well as in briefs) pointing both ways. Now, if it be true that the company did not appeal, then it is also true that the receivers cannot be allowed to stand in its shoes in so far forth as to make such point in the company's behalf; for in an appellate court the fetching and stirring motto of Dumas' Three Guardsmen, "One for all and all for one," is not practically applied in settling the right of one appellant to make a point that concerns another party, who was a co-defendant and did not appeal but abided the judgment. The statutes of the State ordain that error to be reversible must be "error . . . against the appellant or plaintiff in error." (R. 8. 1909, Sec. 2082.)

(b) But if the assumption be indulged that the company actually appealed from the judgment affirming the order of the commission, then there are several reasons why the assignment of error is not well laid.

In the first place, before the cause could get into the circuit court for review, it was necessary for parties complaining of the order of the commission to apply for a rehearing. (Laws 1913, Sec. 110, p. 640). Such application or motion for re-hearing, by express statutory command, must specifically set forth the ground or grounds on which the applicant "considers said order to be unlawful, unjust or unreasonable," and prescribes (p. 641) that "no corporation or person or public utility shall in any court urge or rely on any ground not so set forth in said application."

Now, in appellants' application for a re-hearing before the commission, no such ground as that under discussion was set forth. Hence, the point cannot be ruled on its merits but must be disallowed to appellants by virtue of said statutory command.

In the next place, no such ground of error was laid in appellants' motion for a new trial or their motion in arrest. In that condition of things, an unbending rule of appellate procedure precludes the consideration of any errors not drawn to the attention of the court, nisi, in one or the other of these motions. (Maplegreen Co. vs. Trust Co., 237 Mo. 1, c. 362-3).

The premises all in mind, the point is disallowed to appellants.

II.

Of appellants' point that the court had no power or jurisdiction to affirm an order requiring the re-routing of trains 801 and 802.

It will be observed that the word "court" is employed in the point and not the word "commission". However, in disposing of the contention, we shall assume that appellants' point is tantamount to a total denial of power in the commission to make the order it did; and

since, under the Public Service Act, the circuit court exercises a jurisdiction in its nature derivative or appellate, rather than original, it follows that if the commission had no power to make the order originally, then the circuit court had none to adjudge an affirmance of the order—this agreeable to the maxim, *Cessante primitive, cessat derivativus*—and so appellants' learned counsel treat the contention in their formidable printed argument which runs on the theory that the Public Service Act donated to the commission no power to make trains "deviate from the route dictated by a practical operating policy." In other words, counsel say that this is essentially a case of re-routing and that the commission had not a whit of power to re-route passenger trains in any case that can be put.

Now, if the real question here was the naked and bald one of re-routing trains, no more and no less, then, under the challenge made, we would have call to see whether the finger could be put on such general power to be exercised generally. But in the judicial exposition of a statute so remedial, comprehensive, far-reaching and novel as the Missouri Public Service Act, it is wise to allow such exposition to proceed in its evolution step by step as each concrete case in hand calls; and, therefore, under the facts of this record, we are of the opinion that the case ought not to break on the thin edge of so narrow and academic a question as that of merely re-routing two passenger trains operated by the receivers, and this, because:

In the instant case, the order of the commission was responsive to the complaint, and the gist of the complaint was that it was necessary to have trains 801 and 802 stop at Caruthersville, as they had formerly done, so that said town would have adequate and convenient railroad facilities and service. In our opinion, such re-routing of the two trains as required them to run over the original line around the curve via Caruthersville instead of running them through the cutoff was a mere incident or condition relating to the stoppage of said trains at Caruthersville station, which latter, to wit, the stoppage of trains, was the very heart and soul of the matter. It results from these views, that to search through the Public Service Act with microscopic eyes, as we are invited to do, to discover whether or not the phrase, "re-route trains" appears written there, *ipsissimis verbis*, is not only sticking in the bark but is a vain and futile task. It may be conceded, for the purpose of this case, that the very word "re-route" or the very phrase, "re-route trains", is not written in the statute; but it also must be conceded that the naked question whether the abstract general power (disconnected from the concept of the stoppage of trains) is given to the commission to re-route railroad trains generally, is not in this case either. On the other hand, the concrete question whether under the facts of such a record as this, and for the purpose of giving to Caruthersville reasonable railroad service and facilities, the commission had the power to order trains 801 and 802 stopped at that city and, as an incident or condition precedent to that stop, had the power to require them to run there as they formerly had done on the original railroad line, so that they could stop, is in this case; and that proposition must be liberally ruled on the true spirit and intendment of

the statute as read in the light of, and interpreted by, the reasons underlying it, keeping always steadily in mind that the furtherance of the benefits sought by the legislation and the retarding of the mischiefs struck at thereby is the golden rule of statutory construction.

The general canon of construction just announced is, in effect, the very rule prescribed by the law-making power for the construction of the Public Service Act. (Laws of 1913, Sec. 127, p. 648), to-wit:

"The provisions of this Act shall be liberally construed with a view to the public welfare, efficient facilities, a substantial justice between patrons and public utilities."

The act defines many of its own terms and these definitions illuminate and fix its operative scope and intendment, for instance:

Subdivision 24 of Section 2, reads: "The term, 'transportation of persons,' when used in this act, includes every service in connection with or incidental to the safety, comfort or convenience of the person transported, and the receipt, carriage and delivery of such person and his baggage."

Subdivision 26 of Section 2 reads:

"The term 'service' when used in this act, is used in its broadest and most inclusive sense and includes not only the use and accommodation afforded consumers or patrons, but also * * * the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service * * *."

Subdivision 2 of Section 47 of the act reads in part:

"Whenever the commission shall be of the opinion, after a hearing had * * * upon complaint that the * * * service of any common carrier railroad corporation or 166 * * *, in respect to transportation of persons or property within this state are * * * unreasonable * * * or inadequate, the commission shall determine the * * * reasonable * * * adequate and proper * * * service thereafter to be enforced * * * and so fix and prescribe the same by order, etc."

Section 49 of the act prescribes, inter alia, as follows:

"If, in the judgment of the commission, additional * * * facilities * * * for use by any common carrier, railroad corporation * * * in or in connection with the transportation of passengers * * * ought reasonably to be provided * * * or changes in any thereof in use, ought reasonably to be made * * * in order to promote the security or convenience of the public * * * or in order to secure adequate service or facilities for the transportation of passengers * * *, the commission shall * * * make and serve an order directing such repairs, improvements, changes or additions to be made, * * *."

What is the meaning of the word "facilities," as used in the foregoing section and elsewhere in the act? It is pointed out by counsel that it is thus defined by an accredited treatise (19 Cyc., p. 106-7): "Applied to railroads, it means everything necessary for the convenience of passengers and the safety and prompt transportation of freight. As applied to a ferry franchise, everything incident to the general, prompt and safe carriage of passengers, boats in good repair, appliances answering the purpose, and readiness and willingness to perform the service incident to the grant."

"Section 51 of the act, reads in part as follows:

"* * * the commission shall, after a hearing, either on its own motion or after a complaint, have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or its cars or its motive power or to change the time for starting its trains or cars, or to change the time schedule for the run of any train or car or make any other suitable order that the commission may determine reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation."

167 Other sections of the act might be profitably invoked to show that the re-routing of a train for the purpose of stopping it, thus affording adequate facilities and service to a county seat on the line, is within its purview; but the foregoing is enough for our purpose. It would be narrow construction of the comprehensive act in question to rule that a public utility could, without adequate cause, take from an important community the reasonable service and facilities it had theretofore received at the hands of such public utility, and, as it were by a mere twist of the wrist, to wit, the administrative detail or expedient of re-routing a train through a cutoff, thereby disarm the Public Service Commission of all power to correct any resulting inadequate new service by re-establishing the old. Such construction would open an inviting door to drive a coach and six through the statute and we are clearly of the opinion that it would not be within the intendment of the act. It is on such premises we shall rule the point against appellants; and in doing so we shall limit our holding to the precise case in hand, namely:

We hold that the Public Service Commission of Missouri has power and jurisdiction to require the re-routing of trains where (as here) the re-routing is a mere incident to the main thing, to-wit, the stoppage of such trains in order to render reasonably adequate service to a town, especially where such re-routing is but re-establishing the service formerly rendered by the public utility to such town.

This brings us to the main question in the case and calls for the record facts.

III.

Of the contention that the order of the commission was arbitrary, unjust and unreasonable (and herein of the reasonableness and ade-

quacy of the train service existing at Caruthersville at the time the order was made, and of certain constitutional questions sprung.

168 St. Louis is 305 miles from Memphis. As we understand the record, the St. Louis and San Francisco R. R. purchased from other roads certain lines of track running in the region of and via Caruthersville, and presently connected these tracks with the terminal cities of St. Louis and Memphis. When completed, the original line of the St. Louis & San Francisco R. R. ran through Caruthersville in Pemiscot County, en route from St. Louis to Memphis. Northwest of Caruthersville is the station of Hayti. Southwest of Caruthersville is the station of Grassy Bayou, and trains on the original line, running South from St. Louis, first reached Hayti, next Caruthersville and next Grassy Bayou.

Now, as the bee flies, the distance from Hayti to Grassy Bayou is about 6 miles, while the distance between the same points by way of Caruthersville on the line of the original railroad, is about 10 miles (to be exact, 9 9/10 farther). In other words, the original line curved to the east and made a detour to pass through Caruthersville. In 1904, after the original line was built and in operation, the Railroad Company built a "cut off" track on said direct line from Hayti to Grassy Bayou and at once began to run its through heavy freight trains between St. Louis and Memphis by way of this cut-off. At the same time it also put on two through passenger night trains (one each way) of best modern equipment and service, which said trains were scheduled at 35 miles an hour; and, as we gather, these night trains never ran via Caruthersville but used said cut-off; out to accommodate mails and people of Caruthersville and these passengers to and from Caruthersville who desired to use these night trains, a sleeper to connect with each, ran back and forth from Caruthersville to Hayti on the old original line. No complaint is made of this arrangement, nor was any change sought therein by the complainant. The record also shows that what is known as "through travel" between Memphis and St. Louis, used these night trains to such an extent that on the day trains, presently to be mentioned, the through travel was negligible.

At the same time this cut-off was built, and continuously thereafter for 9 years, until August, 1913, the railroad company also operated two daily passenger trains (one each way) between St. Louis and Memphis via Caruthersville. These trains were known as Nos. 801 and 802—the one southbound to Memphis being No. 801 and the one northbound to St. Louis being No. 802. These daily trains were called "through trains," but they were in fact accommodation trains doing a local (intrastate) business and stopping at over 60 stations, flag stations and cross roads, between said terminal cities. They also did an interstate business. They ran at a slow schedule rate of 23 miles an hour—the one running North from Memphis at a bit faster schedule than the one running South from St. Louis of, say, 40 to 50 minutes.

Caruthersville, the county seat of Pemiscot County, is on the Mississippi River and while it has such a negligible river shipping

and passenger service as was in vogue on that river at that point at the times in hand, yet it quite depended for its mail and passenger service on said railroad company, which, as we gather, has an unbroken monopoly of the railroad business of that region.

Caruthersville is a flourishing, ambitious city of 5,000 people, keenly engaged in business in a rich and rapidly developing country. The railroad company has a \$12,000 passenger station there, and, at the times in hand, 7,000 tickets were sold to passengers traveling out of Caruthersville each month, at an average monthly cash receipt therefrom of \$4,000 (\$48,000 per year.) So railroad receipts from freight business amounted to \$18,000 per month, or \$216,000 per year. In fact, barring Cape Girardeau, the record shows it is the largest and briskest city and the most remunerative shipping point for passengers and freight anywhere on appellants' railroad between Memphis and St. Louis.

It further appears that under the spur and lure of a promise that it was not to lose, or have interfered with, its said through day train service then existing, Caruthersville caused to be procured the right of way for the cutoff mentioned and its citizens donated most of the right of way to the railroad company.

The record shows the following additional facts:

Train 802 was the only day train run by appellants north-bound from Memphis by which passengers from Caruthersville could leave that city in the day time, and, without change of cars, reach St. Louis; and train 801 was the only day train south-bound from St. Louis by which passengers from that city (and intermediate points as far south as Cape Girardeau) could reach Caruthersville in the day time without change of cars. So, said two trains were the only day trains by which passengers could reach Caruthersville from the south in the day time at seasonable hours without change of cars. It appears that much of the business of Caruthersville at the times in hand, came from territory south of the city and the accommodation of the people in that region is a material and live matter to the prosperity of the city. Said two trains were much used during all the years they ran via Caruthersville and supplied it with necessary facilities and service. It seems to be abundantly shown that they were a great convenience and benefit to the city as originally run; and there is substantial evidence tending to show an appreciable business loss to the city by the substituted service and substantial inconvenience in delays incident to the change of cars in making connections and in the quality of the service rendered and the facilities afforded by the substituted service. The commission found (2 P. S. C. R. p. 440) that "the train service as now offered the public at Caruthersville is branch line service both as to equipment * * * and manner of operating trains," and that finding is sustained by the substantial weight of the evidence. There are a dozen or fourteen passenger trains operated to or through Caruthersville in one day. Some of these were in existence when trains Nos. 801 and 802 ran via Caruthersville. Some of them were put on after said trains 801, 802 no longer ran via Caruthersville and some of them met trains 801 and 802 at Hayti, so that passengers

to and from Caruthersville might take them. The paper showing made in regard to the number of passenger trains in and out of Caruthersville at the time of the hearing before the commission, loses some of its significance by the fact that some of them are shuttle trains and the same train carries a different number each way. The passenger traffic accommodated by most of these trains, is
171 not, in its entirety, the passenger traffic accommodated by trains 801 and 802 but extended to the west and southwest.

The commission, as pointed out, spoke of the service and facilities at Caruthersville as "branchline". Now, a branchline service in southeast Missouri, as shown by this record (and of which the court may, without serious impropriety, take notice) is an indifferent service put up with, because nothing better is offered. It is not the kind of service and facilities to give satisfaction, business health and vigor to an ambitious and growing city like Caruthersville. We give an extract from the finding of the commission, which is sustained by the record, which sufficiently gives the data of the service and facilities afforded to the public at Caruthersville.

"Defendants operate a passenger train (No. 821) daily from Hayti, via Caruthersville, to Memphis, leaving Caruthersville at ten minutes after five o'clock a. m., thence to Turrell, Arkansas, where the cars are placed in another train and carried to Memphis, and cars are carried from Memphis to Turrell, Arkansas, and from that point, as No. 822, are carried to Caruthersville, arriving there at eleven o'clock p. m. When trains Nos. 801 and 802 were diverted from Caruthersville, defendants put into service passenger trains Nos. 825 and 826, which are operated daily from Blytheville, Arkansas, via Caruthersville, Hayti and Kennett, to Cape Girardeau and return, arriving at Caruthersville, going north each day at 7:25 a. m. and returning via Caruthersville at seven o'clock p. m. Defendants operate passenger trains Nos. 881 and 882, leaving Caruthersville as No. 882 at fifty minutes after five o'clock, thence to Hayti, Kennett and Cape Girardeau by way of the Leachville branch, and returning to Caruthersville as No. 881 at five minutes after nine o'clock p. m. A passenger train is operated as trains Nos. 893-894-895-896-897-898-891-892 between Campbell, Kennett and other points to Hayti and Caruthersville. That train carries all passengers to and from trains Nos. 801 and 802 and between Caruthersville and Hayti. Train No. 802 as now scheduled arrives at Hayti at forty-five minutes after eleven o'clock a. m. Passengers coming from Caruthersville to take that train leave Caruthersville at fifteen minutes after eleven o'clock a. m., and that train is due at Hayti at forty minutes after eleven o'clock and is due to arrive at Caruthersville from Hayti at twenty minutes after twelve o'clock. Train No. 801 is due to arrive at Hayti at five minutes after four o'clock p. m. The train to meet this train at Hayti leaves Caruthersville at thirty minutes after three p. m. and arrives at Hayti at fifty-five minutes after three o'clock p. m. and returns to Caruthersville at forty minutes after four o'clock p. m. As trains Nos. 801 and 802 are now operated, all passengers going to and from Caruthersville are required to change to or from the said main line at Hayti."

It will be observed that appellants' answer undertook to justify running trains 801 and 802 through the cutoff, rather than via Caruthersville, in order to reduce expenses and make connections at St. Louis and Memphis. Without cumbering the opinion with further details, we state that we do not find these averments of the answer satisfactorily supported by the evidence. To the contrary, at the hearing, other reasons were given for the re-routing of trains, for instance, some relating to track conditions; but we do not find that improper track conditions may not, and should not, with
172 business propriety and reasonable outlay, be overcome; and throughout the whole case, the pregnant fact runs like a marking thread that for nine years after the cutoff was built and in use, the railroad company itself acted on the theory that the routing of these trains via Caruthersville was a practical railroad proposition, all of which must be held to evidence the fact that the railroad company on its then settled judgment deemed such running of said trains a necessary convenience of service and facility to that city and to local traffic wants.

It appears that the greater percentage of the income of the passenger traffic on these trains, in and out of Caruthersville, was from an intrastate; rather than an interstate service, was largely a local as contradistinguished from a through business.

Charges are made on one side that the routing of trains 801 and 802 through the cutoff originated in hostility to the growth and development of Caruthersville and in a corporate disposition to build up a rival city in Hayti. But we do not find the record sustains that contention, nor do we find anything in the record to sustain the contention, made on the other side, as we gather, that the re-establishment of the former routing of trains 801 and 802 originated with complainants as a plan to injure Hayti.

On such record, on the assignment of error now under consideration, we announce the following conclusions:

(a) That the order of the commission, affirmed by the Circuit Court and appealed from, was neither arbitrary, oppressive, unjust or unreasonable on the record we are dealing with.

(b) That at the time the order was made, the North and South passenger train service at Caruthersville was, in fact, inadequate and unreasonable.

(c) In reaching the above conclusion, we have held in review (among other things) the condition of the track in the detour, the expense incident to its reasonable repair, the fact that the railroad is under a federal receivership, the number of passenger trains in and out of Caruthersville daily and the alleged interference with connections at terminals, which, we think, encompass the
173 main contentions of appellants under this head; and in this connection, we make the following observations on two phases of the case:

(1.) It must, in reason be allowed that the mere number of trains is not of so much importance, on the question of reasonableness and adequacy of service, as are the direction, destination, and facilities of the trains listed. The fact that some of these trains are "shuttle trains," and that many of the others bear away southwest from the main line and cross the Little River Drainage territory, must not be overlooked; for the inadequacy complained of is in the north-and-south service.

(2) There was testimony tending to show that to make the old track around the detour as good as the main line track, would cost, it was estimated, \$6,000 per mile; but it does not appear that for these slow moving day passenger trains 801 and 802, a track was required as good as the main line, nor does it appear that the condition of track, ties and roadbed around the detour was not, at least to some extent, due to neglect which ought to cease. We are of the opinion the track outlay, if any be necessary, would not be unreasonable, nor are terminal connections unreasonably interfered with—a subject referred to again later.

(c) In this connection it is argued by learned counsel for appellants that the order of the commission, in question, was unconstitutional and void for that it denied the railroad company the equal protection of the law and did not constitute due process of law. As to that, we say:

The contentions take not only color but hinge on the related question of fact, namely whether the order is reasonable or unreasonable, arbitrary or not, just or unjust, oppressive or not. We have been cited to no soundly-reasoned and controlling case, holding that the reasonable and just order of a Public Service Commission, requiring adequate and reasonable train service and transportation facilities, at a given town on its line, pinged upon the constitutional 174 guaranties of due process and equal protection of the law, where, as here, the orders of such commission are made subject to judicial review by the Act creating it and donating regulation power to it. In this view of it, since the fact of the justness and reasonableness of the order in question has already been determined in this opinion, and since appellants are now having their day in court and a judicial hearing, we disallow the constitutional points under discussion and hold them without controlling vitality on this record.

This brings us to the only remaining material contention of appellants', namely:

IV.

Of the contention that the order was void for that it interfered with interstate commerce by impinging upon named constitutional guaranties in that behalf.

In ruling the contention, the following propositions must be taken as true, to-wit:

First. There are no Federal regulations shown by this record covering the subject matter of the concrete case. Hence, it cannot be held that the authorities of this State, in making the order in question, have intruded upon territory already occupied and covered by Federal regulations in point.

Second. It must be considered that the order in question, on its face, does not relate to or cover interstate commerce, but, on the other hand, solely on its face relates to and is levelled at local and intrastate transportation service and facilities at Caruthersville for passengers. Hence, it cannot be ruled that the order on its face is void as an interference with interstate commerce.

Third. It is self evident that if the order complained of affects interstate commerce at all, it does not do so directly, or as the gist of the matter, but only indirectly and incidentally.

Fourth. Present the three propositions, just rules above, it results that the remaining and decisive inquiry is this:

175 Does the order, under the cover and guise of a regulation of an intrastate matter, nevertheless lay an unreasonable burden upon and is it unduly restrictive of interstate commerce? For it may be conceded that the right doctrine is that a State regulation surcharged with vice of that character, may be drawn within the intendment of the commerce clause of the Federal Constitution and may become void under such circumstances.

Now, we search in vain in this record for any unreasonable burden or for any undue restriction upon interstate commerce hid away in the bowels of the order. The through passenger travel on the railroad between its terminals, St. Louis and Memphis (except to a negligible extent) is taken care of on its two heavy and modern night trains, which latter run and always have run through the "cutoff." The only two through passenger day trains, to-wit, 801 and 802, which are affected by the order, carry few or no through passengers from St. Louis to Memphis or vice versa. The connections at St. Louis and Memphis for those who do use these day trains are not seriously hurt by the order. So, too, these day trains in question, though well equipped, run on an exceedingly slow schedule, calling for sixty stops at this or that crossroad, way station and little town in running about three hundred miles. Now, keeping in mind that Caruthersville is a fine, growing and populous city (as cities run in Missouri), is a county seat and originates more passenger business and travel, in and out, than any other city on the entire line, outside of St. Louis and Memphis, and excepting only Cape Girardeau—we say keeping in mind these facts and the further fact that Caruthersville, by the use of the "cutoff," by these two day trains, was to all intents and purposes, relegated to "a branchline service" with all its incident disadvantages and impediments to travel, he would be an over-bold man who would not conclude that interstate commerce would be benefited rather than burdened or restricted by the order appealed from.

176 We are of the opinion, then, that interstate commerce will be benefited by the order and will not be duly restricted or burdened by it. We therefore conclude that the order is not subject to be attacked from the angle that it unduly restricts or burdens interstate commerce.

The conclusions reached under this head are well within the doctrines announced in a line of cases. We cite only a few.

Gulf Colorado & Santa Fe Railway Co. vs. State of Texas (decided by the Supreme Court of the United States, March 4th, 1918—Sec. S. C. Reporter's Ed. 58-68).

Chicago B. & Q. Ry. Co. vs. R. R. Commission, 237 U. S. 220.

Lake Shore & M. S. R. Co. vs. Ohio, 173 U. S. 285.

Mo. Pac. R. R. vs. Atkinson et al., 192 S. W. 86.

State ex. rel. Mo. Pac. R. R. & Bush, Receiver vs. Public Service Commission of Mo. (Not yet Officially reported—handed down on January Call, 1918 of Mo. Sup. Ct.)

The premises all considered, the order of the commission appealed from should be affirmed. It is so ordered. All Concur except Woodson, J., who dissents in separate opinion in which Bond, C. J., joins; Faris, J., not sitting.

HENRY LAMM,
Special Judge.

The dissenting opinion of Woodson, J., filed in said cause on the same day, to-wit, the 15th day of March, 1919, is in the words and figures following:

177 In the Supreme Court of Missouri,

In Banc, October Term, 1918.

JAMES W. LUSE et al., Receivers, etc., Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent.

Dissenting Opinion by Woodson, J.

I dissent from the opinion written in this case by our learned special Judge who was called in to sit with us in the case, because of an equally divided court, one of our number not sitting.

For the reasons stated in the opinion I wrote when this case was in division, which I refile here as a dissent, I dissent from the majority opinion herein.

I also dissent for the further reason that the majority does not state the facts as I understand the record discloses them. The facts stated by me in the divisional opinion which is refiled here, were taken almost literally from the statement of the case made by coun-

sel for the respondent, and in my opinion the record sustains that statement.

The divisional opinion was as follows:

"This action originated before the Public Service Commission, by the Mayor and Board of Aldermen, of the City of Caruthersville, filing a petition requesting an order requiring the appellants to re-route their trains, Nos. 801 and 802, through said city.

"After hearing the evidence, the respondent ordered the appellants to route said trains through Caruthersville as prayed.
178 From that order the appellants moved the case to the Circuit Court of Cole County by writ of certiorari. After hearing the case the Circuit Court affirmed the order of the Public Service Commission, and in due time appellants appealed the cause to this court.

"The principle facts of the case are stated by counsel for respondent in substantially the following language:

"That Caruthersville is the county seat of Pemisicot County and has about five thousand inhabitants. The appellants, at the time of the filing of the original complaint herein, were erecting a new passenger depot at Caruthersville at a cost of \$12,000. The railroad facilities furnished at that place before the construction of the line from St. Louis to Memphis by the St. Louis and San Francisco Railroad Company were afforded by a line of railroad extending through Caruthersville to a point in Arkansas. This line was extended north to St. Louis and south to Memphis, Tennessee, and was acquired by the St. Louis and San Francisco Railroad Company. About the year 1904, the entire railroad from St. Louis to Memphis was completed and opened for use. The line of appellants' railroad extending through Caruthersville makes a large curve toward the east. The distance in a direct line between Grassy Bayou, which is on the railroad south of Caruthersville, is six miles, while the distance along the railroad from Grassy Bayou, to Caruthersville is nine miles, and from there to Hayti is seven miles. In 1904 the appellant railroad company constructed a railroad track from Grassy Bayou to Hayti, almost due north and south, a distance of six miles, connecting the north and south line of appellants' road instead of detouring to the east nine miles from Hayti to Caruthersville, and then back seven miles to Grassy Bayou, thus saving a run of about eleven miles in distance and from thirty-five to forty minutes in time.

179 "The purpose of constructing the road between the points last named was, as the respondent's evidence tended to show, for the use of the freight trains, and upon this assurance the citizens of Caruthersville assisted in procuring the right of way for the railroad between Grassy Bayou and Hayti, and donated a large part of it to the railroad company.

"Trains Nos. 801 and 802 were, until August, 1913, routed from St. Louis to Memphis and return through Caruthersville. At the time last named, said trains were routed over the short line from Grassy Bayou to Hayti and Caruthersville to carry passengers to and from said trains Nos. 801 and 802 at Hayti, and passenger

trains Nos. 825 and 826 have been put into service between Blytheville, Arkansas, and Cape Girardeau, Missouri, by way of Caruthersville, Hayti and Kennett.

"Caruthersville is the second city in importance on appellant's line between St. Louis and Memphis, and the ticket sales at Caruthersville are only exceeded by the sales at Cape Girardeau. More than seven thousand tickets were sold to passengers traveling out of Caruthersville each month. The receipts from such sales averaged about \$4,000, and the receipts at said station from freight business amounted to \$18,000 per month. Caruthersville is situated on the line of railroad as originally located. Trains Nos. 801 and 802 were operated through Caruthersville for nine years.

"There are, independent of these trains, Nos. 801 and 802, seven trains running daily, each way, from Hayti to Grassy Bayou via Caruthersville, fourteen in all, connecting with the trains on the main line running from St. Louis, Missouri, to Memphis, Tennessee.

"Opinion.

I.

"Counsel for respondent base their authority for making 180 the order complained of by counsel for appellant, on sections 49 and 51 of the Act of 1913, (Laws 1913, pp. 588 and 589). They read as follows:

"Sec. 49. Power of Commission to Order Repairs or Changes. If in the judgment of the Commission additional tracks, switches, terminals or terminal facilities, stations, motive power, or any other property, construction, apparatus, equipment, facilities or device for use by any common carrier, railroad corporation or street railroad corporation in or in connection with the transportation of passengers or property ought reasonably to be provided, or any repairs or improvements to or changes in any thereof in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers or property, the Commission shall, after a hearing, either on its own motion or after complaint, make and serve an order directing such repairs, improvements, changes or additions to be made within a reasonable time and in a manner to be specified therein, and every common carrier, railroad corporation and street railroad corporation is hereby required and directed to make all repairs, improvements, changes and additions required of it by any order of the Commission served upon it. If any repairs, improvements, changes or additions which the Commission has determined to order require joint action by two or more of said corporations, the Commission shall, before entry and service order, notify the said corporations that such repairs, improvements, changes or additions will be required, and that the same shall be made at their joint cost, and thereupon the said corporations shall have thirty days or such longer time as the Commission may

grant within which to agree upon the part or division of cost of such repairs, improvements, changes or additions which each shall bear. If at the expiration of such time such corporations shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of such repairs, improvements, changes or additions, the Commission shall have authority, after further hearing to fix in its order the portion of such cost or expense to be borne by each corporation and the manner in which the same shall be paid and secured.

"Sec. 51. Power of Commission to Order Changes in Time Schedule, Running of Additional Cars and Trains. If, in the judgment of the Commission, any railroad corporation or street railroad corporation does not run trains enough or cars enough or possess or operate motive power enough, reasonably to accommodate the traffic, passenger and freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at reasonable or proper time, having regard to safety, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the Commission shall, after a hearing, either on its own motion or after complaint, have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car or make any other suitable order that the Commission may determine reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation."

"Counsel for appellants deny that either of the sections quoted empower the Commission to make the order complained of.

"In our opinion counsel for appellants is correct.

"By reading section 49, it will be seen that it relates only to repairs or changes in facilities, and empowers the Commission to require additional tracks, motive power, etc., to be provided, repaired or changed. And, as well said by counsel, 'it does not authorize the Commission to direct where trains shall be run, but attempts to regulate only the facilities by which trains are run;' and especially may we add, that neither of said sections empowers the Commission to order what particular train or trains shall or shall not run to or from particular places. Such orders would be unjust, unreasonable, oppressive and intolerable, and doubtless that is why the legislature withheld that power from the Commission.

"All the Legislature had in mind was to empower the Commission to require the railroads of this State to furnish ample and suitable trains to accommodate the public demand, where they were refusing or neglecting to so do. If the fourteen trains before mentioned are not sufficient and suitable for the transportation of freight and passengers to and from Caruthersville, at reasonable times, then clearly the Commission has the authority, under said statutes, to require appellants to furnish them.

"Moreover, trains Nos. 801 and 802 are interstate trains, engaged

in interstate commerce, and for that reason, the State has no power or authority to impose unjust, unreasonable or oppressive burdens upon them. The following cases so hold:

"Illinois Central Ry. vs. Illinois, 163 U. S. 142.

"McNeal vs. Southern Ry. 202 U. S. 543.

"Atlantic Coast Line v. Wharton, 207 U. S. 328.

"Herndon v. C. R. I. & P. Ry. 218 U. S. 135.

"Kansas City Southern Ry. v. Kaw Valley District, 233 U. S. 72.

"C. B. & Q. Ry. v. Wisconsin, 237 U. S. 220.

"There has been so much, and so well said, upon this subject, by the United States Supreme Court, that nothing of additional importance can be said by this Court.

183 "The mere statement of the facts of this case conclusively show that the order in question requiring these interstate trains to detour seventeen miles out of their due course, simply in order to furnish Caruthersville with two additional trains, when she already has fourteen, is unjust, unreasonable and oppressive, within the meaning of the authorities cited.

"If the fourteen trains mentioned are not ample or suitable for the purposes mentioned, then the Commission has the authority, under the statutes mentioned, to remedy those deficiencies, but not to impose this unjust burden on these through trains.

"There are other points presented and discussed by counsel but the view we have taken of the case renders it unnecessary for us to notice them.

"For the reasons stated, the judgment of the Circuit Court is reversed and the cause remanded, with directions to the Circuit Court to set aside the order, requiring the appellants to reroute trains Nos. 801 and 802, etc."

For the reasons stated, I dissent.

A. M. WOODSON,

Judge.

Bond, C. J., concurs herein.

184 And afterwards, on the 4th day of April, 1919, the following further proceedings were had in said cause, to-wit:

JAMES W. LUNK et al., Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

Comes now the St. L. & San Francisco Railway Company, by attorney, and files suggestion of Neal discharge of appellants, receivers, and motion for substitution of parties appellant.

And afterwards, on the 7th day of April, 1919, and during said October Term, 1918, of said Supreme Court, the following order was made and entered of record in said cause, to-wit:

No. 19,319.

JAMES W. LUSK, WILLIAM C. NIXON, and WILLIAM B. BIDDLE, Receivers of the Railroad and Property of St. Louis and San Francisco Railroad Company, Appellants,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, Respondent.

The application of St. Louis-San Francisco Railway Company to be substituted as party appellant in the above-entitled cause in lieu of the above-named appellants, to which such substitution respondent has duly consented, is hereby granted, and said St. Louis-San Francisco Railway Company is hereby substituted as sole party appellant in this cause.

185 STATE OF MISSOURI, *set*:

I, J. D. Allen, clerk of the Supreme Court of the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in a cause between James W. Lusk, William C. Nixon, and William B. Biddle, Receivers of the Railroad and Property of St. Louis and San Francisco Railroad Company, Appellants, and Public Service Commission of the State of Missouri, Respondents, No. 19,319, as called for in the præcipe herein, and as fully as the same appear of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the official seal of the Supreme Court of the State of Missouri, at my office in the City of Jefferson, State aforesaid, this 12th day of May, 1919.

[Seal of the Supreme Court of Missouri.]

J. D. ALLEN,
*Clerk of the Supreme Court
of the State of Missouri.*

Endorsed on cover: File No. 27,147. Missouri Supreme Court. Term No. 393. St. Louis & San Francisco Railway Company, plaintiff in error, vs. The Public Service Commission of the State of Missouri. Filed June 2d, 1919. File No. 27,147.

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The Court erred in its decision and judgment in upholding as legal and valid the order of the defendant in error, and in holding and adjudging that said order did not, and does not, constitute a regulation of, interference with or burden upon interstate commerce, contrary to the provisions of Section 8 of Article I of the Constitution of the United States, and in holding that if the order complained of affects interstate commerce at all, it does not do so directly, or as the gist of the matter, but only indirectly and incidentally.

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The order of the defendant in error affirmed by the Supreme Court of Missouri constitutes a regulation of, an interference with and an undue burden upon interstate commerce, in violation of Section 8 of Article I of the Constitution of the United States.

(a) Caruthersville has reasonable passenger facilities aside from these interstate trains. But if it has not, the remedy is simple under the Missouri statutes without burdening interstate commerce.

(b) The order requires interstate passengers using said interstate trains to travel to their detriment approximately ten miles off their regular course and pay extra fare for such diversion without any corresponding benefit to them.

(c) The order destroys or seriously affects plaintiff in error's interstate connections at St. Louis, Missouri, and Memphis, Tennessee.

(d) The order unnecessarily requires the expenditure of over a hundred thousand dollars for placing the track between Hayti and Caruthersville and between Grassy Bayou and Caruthersville in proper condition for safe operation of these interstate trains on reasonable schedules.

(e) The order is solely in the interest of Caruthersville and in total disregard of the rights of other cities and of the citizens thereof. It does not rest upon the *bona fide* exercise of the police power of the State.

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

ST. LOUIS-SAN FRANCISCO
RAILWAY COMPANY,
Plaintiff in Error,

v.

THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI,
Defendant in Error.

No. 393.

In Error to the Supreme Court of the State of Missouri.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

(Figures in parentheses indicate page of record.)

An order of the Public Service Commission of Missouri (1) requiring St. Louis and San Francisco Railroad Company and its Receivers to divert from their main line two interstate passenger trains running be-

tween St. Louis, Missouri, and Memphis, Tennessee, and operate these trains by way of the City of Caruthersville, Missouri, and thence back to the main line, was upheld on appeal by the Circuit Court of Cole County, Missouri (13), and finally affirmed (100) by the Supreme Court of Missouri. The proceedings originated by the officials of Caruthersville filing with defendant in error a complaint (14) asking, among other things, the rerouting of these trains and the restoration of a previous schedule of a local train. When the complaint was filed Receivers were operating the railroad of the St. Louis and San Francisco Railroad Company (17). They were subsequently discharged and plaintiff in error was by the Supreme Court of Missouri (118) substituted as sole party appellant in lieu of St. Louis and San Francisco Railroad Company and its Receivers.

Throughout the entire proceedings the point was made and preserved that the order of defendant in error was in violation of Section 8 of Article I of the Constitution of the United States in that it constituted a regulation of, interference with and burden upon interstate commerce, as will be seen by reference to the motion for rehearing filed with defendant in error (94), the motion for new trial in the Circuit Court (82), and the opinion of the Supreme Court of Missouri (100-102; also 210 Southwestern Reporter, 72).

The judgment of the Circuit Court was at first reversed by one of the divisions of the Supreme Court of Missouri (117), but on transfer to the Court *en banc* the Court was equally divided (113), and a special judge was ordered (99) and the judgment of the Circuit Court was affirmed, the original opinion being filed as a dissenting opinion by two of the judges (113).

In finally affirming the case the Supreme Court of Missouri held (111-112):

“First: That there are no Federal regulations shown by the record covering the subject matter of the concrete case. Hence it can not be held that the authorities of the State, in making the order in question, have intruded upon territory already occupied by and covered by Federal regulations in point.

“Second: It must be considered that the order in question, on its face, does not relate to or cover interstate commerce, but, on the other hand, solely on its face relates to and is levelled at local and intrastate transportation service and facilities at Caruthersville for passengers. Hence, it can not be ruled that the order on its face is void as an interference with interstate commerce.

“Third: It is self-evident that if the order complained of affects interstate commerce at all, it does not do so directly, or as the gist of the matter, but only indirectly and incidentally.

“Fourth: * * * That interstate commerce will

be benefited by the order and will not be duly (unduly) restricted or burdened by it."

The petition for writ of error (1) alleges the discharge of the Receivers as above stated, the succession of plaintiff in error to all the right, title and interest of the St. Louis and San Francisco Railroad Company and of said Receivers in and to the railroad and property of said St. Louis and San Francisco Railroad Company and the due substitution in the Supreme Court of Missouri of plaintiff in error in lieu of said Receivers, and further alleged that the adjudication by said Supreme Court of Missouri by its final judgment that the order of defendant in error is not in violation of the provisions of Section 8 of Article I of the Constitution of the United States, was manifest error to the damage of plaintiff in error.

SPECIFICATION OF ERRORS.

The Court erred in its decision and judgment in upholding as legal and valid the order of defendant in error, and in holding and adjudging that said order did not, and does not, constitute a regulation of, interference with or burden upon interstate commerce, contrary to the provisions of Section 8 of Article I of the Constitution of the United States, and in holding that if the order complained of affects interstate commerce at all, it does not do so directly, or as the gist of the matter, but only indirectly and incidentally.

BRIEF OF THE ARGUMENT.

The order of the defendant in error affirmed by the Supreme Court of Missouri constitutes a regulation of, an interference with and an undue burden upon interstate commerce, in violation of Section 8 of Article I of the Constitution of the United States.

Illinois Central Railroad Co. v. Illinois, 163 U. S. 142;

McNeil v. Southern Railway Company, 202 U. S. 543;

Atlantic Coast Line v. Wharton, 207 U. S. 328;

Herndon v. Chicago, R. I. & P. Railway Co., 216 U. S. 135;

Kansas City Southern Ry. Co. v. Kaw Valley District, 233 U. S. 75;

Chicago, Burlington & Quincy R. R. Co. v. Wisconsin, 237 U. S. 220;

Great Northern Railroad Co. v. Minnesota, 238 U. S. 340;

Cleveland, C. C. & St. L. R. R. Co. v. Illinois, 177 U. S. 514;

Mississippi R. R. Com. v. Illinois Central R. R. Co., 203 U. S. 335;

Interstate Com. Commission v. Diffenbaugh, 222 U. S. 42.

(a) Caruthersville has reasonable passenger facilities aside from these interstate trains. But if it has

not, the remedy is simple under the Missouri statutes (105, 106) without burdening interstate commerce.

(b) The order requires interstate passengers using said interstate trains to travel to their detriment approximately 10 miles off their regular course and pay extra fare for such diversion without any corresponding benefit to them.

(c) The order destroys or seriously affects plaintiff in error's interstate connections at St. Louis, Missouri, and Memphis, Tennessee.

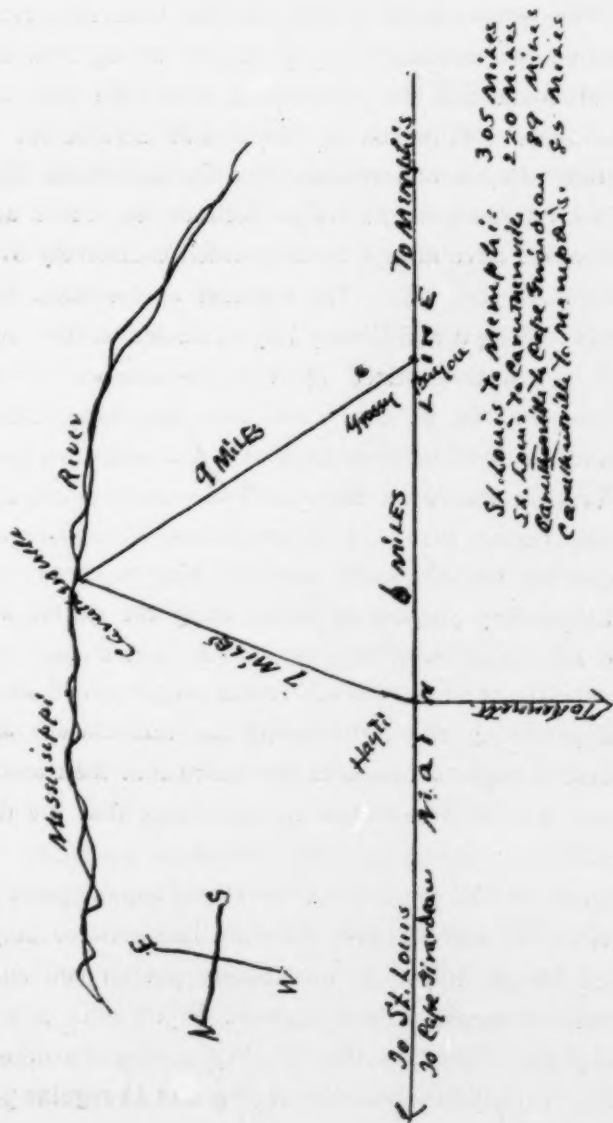
(d) The order unnecessarily requires the expenditure of over a hundred thousand dollars for placing the track between Hayti and Caruthersville and between Grassy Bayou and Caruthersville in proper condition for safe operation of these interstate trains on reasonable schedules.

(e) The order is solely in the interest of Caruthersville and in total disregard of the rights of other cities and of the citizens thereof. It does not rest upon the *bona fide* exercise of the police power of the State.

The foregoing propositions will be discussed in their order with such statement of facts as is necessary to a proper understanding thereof. That the Court may have a general idea of the questions involved a brief statement of facts is necessary, reserving for the consideration of the several propositions

advanced a statement of such facts as are immediately pertinent thereto.

Caruthersville, Missouri, is on a branch line (15) of the St. Louis-San Francisco Railroad—generally known as the “Frisco System”. It has a population of 3,655 persons, according to Rand, McNally & Company’s Atlas of 1918. It has river transportation facilities (15), being located on the Mississippi River (32). It is seven miles from Hayti, Missouri, a point on the main line, and nine miles from Grassy Bayou, Missouri, another point on the main line (28). The distance between Hayti and Grassy Bayou over the main line is approximately six miles (63). The distance between Hayti and Grassy Bayou, via Caruthersville, is approximately 16 miles (64). The situation is graphically illustrated by the following diagram:



The order of the Public Service Commission required two interstate day passenger trains, Nos. 801 southbound and 802 northbound, to deviate from the main-line southbound at Hayti and northbound at Grassy Bayou and run through Caruthersville (81). Two interstate night trains between St. Louis and Memphis have always been operated exclusively over the main line (35). The segment of the main line between Hayti and Grassy Bayou, known as the "cut-off", was constructed by the predecessors of the Frisco in 1904, prior to which time no through trains were operated between St. Louis and Memphis (44). For some time after the cut-off was constructed, and until August, 1913 (17), trains 801 and 802 were operated *via* Caruthersville and the record shows that the primary purpose of constructing the cut-off was to aid operation of fast through freight trains (34). The citizens of the Caruthersville neighborhood aided in procuring the right-of-way for this cut-off, and there is vague evidence in the record that their assistance was furnished upon the assurance that the day passenger interstate trains would be operated *via* Caruthersville (50). When the Frisco began operating trains 801 and 802 over the main line between Hayti and Grassy Bayou it immediately put on two additional interstate trains between Blytheville, Arkansas, and Caruthersville, thereby giving Caruthersville, with the train service it then had **14 regular pas-**

senger trains daily (56, 64). These trains afforded proper connections at Hayti for Caruthersville passengers with trains 801 and 802 (54, 56), and in addition carried Pullman sleepers to and from Caruthersville for its convenience, making proper connections at Hayti without change of cars with the night trains 805 and 806 (53, 54). The complain (15) assigned as the justification for the relief prayed that by the discontinuance of trains 801 and 802 through Caruthersville the city was **unjustly discriminated** against in favor of its rival city Hayti (40).

The numbers and schedules of the 14 daily regular passenger trains serving Caruthersville, above referred to, are as follows (56):

Train 821 leaves Hayti 4:45 a. m., operating *via* Caruthersville, leaving that point 5:10 a. m., running through to Memphis, serving passengers from Caruthersville to all points south of Caruthersville in Missouri and Arkansas, and Memphis, Tennessee. (This train takes a Pullman from the St. Louis to Memphis train 805 from Hayti to Caruthersville [53]).

Train 822 leaves Turrell, Ark., 7:40 p. m., having a connection out of Memphis, Tenn., at 6:10 p. m., stopping at all stations between Turrell and Caruthersville, arriving at the latter city 11:00 p. m. and Hayti 11:25 p. m. (This train takes the St. Louis sleeper from Caruthersville to Hayti, where it is picked up by the through St. Louis train 806 [54]).

Train 826 leaves Blytheville 6:05 a. m., operating *via* Caruthersville and Hayti and Cape Girardeau, reaching Caruthersville 7:25 a. m. and Cape Girardeau 11:30 a. m.

Train 825 leaves Cape Girardeau 3:10 p. m., operating *via* Caruthersville to Blytheville, reaching Caruthersville 7:05 p. m., and Blytheville 8:30 p. m.

(The four trains above mentioned are all interstate trains operated through Caruthersville, and make all the stops between Caruthersville and Holland on the south and between Caruthersville and Cape Girardeau on the north (54, 55). It is admitted that the coaches and other equipment of these trains, as well as the trains mentioned below, are not equal to the equipment of the interstate trains Nos. 801, 802, 805 and 806. It may be remarked in passing that trains Nos. 826 and 825 were put on after trains 801 and 802 began using the cut-off, and these trains are familiarly called by the witnesses the "Bull Moose".)

Train 894 leaves Caruthersville 11:15 a. m., arrives Hayti 11:40 a. m., connecting with train 802, passing Hayti 11:50 a. m., delivering passengers to that train from Caruthersville.

Train 895 leaves Hayti 11:55 a. m., taking passengers from that train (train 802) back to Caruthersville, reaching there 12:20 p. m.

Train 896 leaves Caruthersville 3:30 p. m., reaching Hayti 3:55 p. m., connecting with train 801, passing

through Hayti 4:10 p. m., delivering passengers from Caruthersville to that train.

Train 897 leaves Hayti 4:15 p. m., taking passengers from 801 back to Caruthersville.

Train 882 leaves Caruthersville 5:50 a. m., operating through Hayti-Kennett, Gibson, Clarkton and Brooks Junction to Cape Girardeau, reaching the latter point 12:45 p. m.

Train 881 leaves Cape Girardeau 2:10 p. m., operating *via* Brooks Junction, Clarkton, Gibson and Kennett, reaching Caruthersville 9:05 p. m.

Train 893 leaves Gibson 6:30 a. m., operating *via* Kennett with a side trip to Leachville, reaching Caruthersville 11:05 a. m.

Train 898 leaves Caruthersville 4:50 p. m., arrives Kennett 6:00 p. m., making side trip to Senath, reaching Gibson 7:33 p. m.

Train 892 leaves Caruthersville 12:30 p. m., arrives Kennett 1:45 p. m.

Train 891 leaves Kennett 1:50 p. m., arrives Caruthersville 3:20 p. m.

(a) **Caruthersville has reasonable passenger facilities aside from these interstate trains. But, if it has not, the remedy is simple under the Missouri statutes without burdening interstate commerce.**

“The term ‘adequate or reasonable facilities’ is not in its nature capable of exact definition. It is a relative expression, and has to be considered

as calling for such facilities as might be fairly demanded, regard being had, among other things, to the size of the place, the extent of the demand for transportation, the cost of furnishing the additional accommodation asked for, and to all other facts which would have a bearing upon the question of convenience and cost.”

Atlantic Coast Line v. Wharton, 207 U. S. 328, *l. c.* 335.

As shown by the above train schedule Caruthersville has 14 daily passenger trains. It has a population of 3655 persons. In addition to its train service it enjoys water transportation facilities (15, 32). Its railroad ticket sales average approximately \$4,000, and its freight business amounts to approximately \$18,000 monthly (44). To place the tracks leading from Hayti to Caruthersville and from Grassy Bayou to Caruthersville in reasonably safe condition for handling these interstate trains on reasonable schedules would require an original outlay of approximately one hundred thousand dollars (74). Four of the passenger trains operating through Caruthersville are interstate trains (56). The opinion of the Supreme Court of Missouri seeks to belittle the character of some of the remaining 10 trains by stating that “some of them are shuttle trains and the same train carries a different number each way” (109). It is a matter of common knowledge that this is a universal practice

among railroad companies. Frisco train 805 runs from St. Louis to Memphis. Its train number 806 runs from Memphis to St. Louis. It is immaterial to the traveling public whether the consist of train 806 is the same as that of 805, or whether an entirely different equipment is used. The same train making a round trip between two points gives the same service as two trains one in each direction. The schedule aforesaid shows that prompt and adequate connections at Hayti with trains 801 and 802 are furnished the citizens of Caruthersville by means of this train service. They are merely subjected to the inconvenience of changing cars at Hayti in either going to or from Caruthersville. Like connections are furnished to other persons desiring to go to Caruthersville. For the convenience of parties going to or from Caruthersville, desiring to use night trains 805 and 806, Pullman service is furnished and even the necessity of changing cars at Hayti is avoided (53, 54). Passengers leaving Caruthersville can take a sleeper at that point and it is consolidated with the night train at Hayti without any inconvenience to such passengers, and passengers using these night trains going to Caruthersville have like accommodations furnished them. For a branch line city this would appear to reasonable minds adequate and reasonable service.

But Caruthersville is not insisting that it has not a sufficient number of trains if the complaint is any in-

dex to the nature of the grievance. The complaint (15) seeks to have these two interstate trains diverted from the main line and run through Caruthersville because the existing practice **unjustly discriminates** against Caruthersville. The burden of the evidence tends to show that the particular ground of complaint is that Caruthersville loses business to Hayti and other neighboring towns on the main line that would come to it if these trains were diverted from the main line (15, 40). Other reasons are assigned why the trains should be routed through Caruthersville, but none of them are that Caruthersville has not already a sufficient number of passenger trains in and out each day. For instance, complaint is made of the character of the coaches used on some of the 14 trains in that some of them are old property and in bad condition (21); that the cars are old fashioned and have no vestibules (21); that they are dirty (21). Another objection is based on the ground of alleged inconvenience, such as early rising to catch main line trains (27); changing cars at Hayti (26); riding on poorer trains than interstate trains (20); getting in and out of Memphis at different hours (23); making a long hard day to go to Memphis to transact one's business and return (27); taking chances of trains being late (27); lack of dining car service (20); inconvenience to farmers in the south end of the county in that they have to get up early in the morning in win-

ter time to catch the "Bull Moose" trains, although it is very convenient for them in summer time (43).

The same character of complaint was lodged against the Railroad Company in *Atlantic Coast Line v. Wharton*, 207 U. S. 328, and this Court disposed of those contentions in the following manner:

"That the inhabitants of a place demand greater facilities than they have is not at all conclusive as to the reasonableness of their demand for something more. Fault is found here with the character of some of the local trains, in that the appointments thereof are not up to a sufficiently high standard. It is true that included in these eleven trains were some which were a combination of freight and passenger, and others which only ran between Latta and Clio, and those are described as dirty and without proper closets and drinking tanks. **These deficiencies are remediable by other means than the stoppage of the two trains in question.**"

In the *Wharton* case the Court was discussing the reasonableness of an order requiring trains to stop at towns through which they already ran. In the present case the Court is to determine the reasonableness of an order requiring interstate trains to depart from the regular main line and make a detour over branch lines at a loss of from 35 to 45 minutes of running time (57), and over a distance 10 miles longer than by way of the main line.

If Caruthersville is discriminated against in favor of Hayti the discrimination is not unjust, as Hayti enjoys a natural advantage to which it is entitled under the law in being located on the main line, and "the law does not attempt to equalize fortune, opportunities or abilities". *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S., *l. c.* 46. To remove an alleged discrimination against Caruthersville would result in creating a discrimination against Hayti and other cities.

Again, if the equipment of the 14 trains serving Caruthersville is inadequate, the remedy, as stated in the Wharton case, is not by requiring these two interstate passenger trains to leave the main line and run through Caruthersville, but by having the inadequate and improper equipment repaired or placed in proper condition, or, if necessary, by requiring new equipment. This the Commission had full power to require under Sections 49 and 51 of the Missouri Laws of 1913 (105, 106).

Again, if as a matter of fact it did not have adequate passenger train service, a remedy existed under the Missouri Laws above cited without violating the commerce clause of the Constitution, and the Railroad Company should have been given an opportunity to furnish additional passenger service without being required to divert and re-route these two interstate trains. This principle is illustrated in *Great Northern*

Railway Company v. Minnesota, 238 U. S. 340, where a railroad company was required by the Minnesota Commission to erect a scale in its stock yards at a certain town, discrimination being charged in that the company had voluntarily erected scales at other stock yards in the state. This Court held that discontinuing the use of existing scales would abate the alleged discrimination and probably entail little, if any, outlay. But the Commission's order precluded the use of this method to bring about lawful conditions, and the Court held that the order was plainly arbitrary and unreasonable. To like effect are also *Chicago, B. & Q. R. R. v. Wisconsin*, 237 U. S. 220, 229; *Miss. R. R. Com. v. Illinois Central R. R.*, 203 U. S. 335, 345.

Reference to some of the cases decided by this Court involving the illegality of orders of state authorities requiring interstate trains to stop at certain points within their jurisdictions may not be amiss at this point in determining the injustice of the order in this case. The cases are as follows:

In *C., C. & St. L. Ry. v. Illinois*, 177 U. S. 514, four trains each way stopped at Hillsboro, Illinois, a city with a population of 3,424. A fast through train was operated through Hillsboro and did not stop at that point. The Court had under consideration a statute of Illinois requiring all passenger trains to stop at county seats, and held that the statute was invalid

and that the company need not stop its through train at Hillsboro.

In *Atlantic Coast Line v. Wharton*, 207 U. S. 328, the Court held that two regular passenger trains would be sufficient for Latta and Clio, stations in South Carolina, with populations each of about 300 and thickly settled territory surrounding them.

In *Mississippi R. R. Commission v. Illinois Central R. R.*, 203 U. S. 335, the Court held that three daily trains in one direction were sufficient for Magnolia, Mississippi, a city of 1,200 inhabitants, and that it would be unreasonable to require fast interstate trains to stop at that point.

In *Herndon v. Chicago, Rock Island & Pacific Railway Company*, 218 U. S. 135, it was held that two passenger trains each way, and one local freight each way, were sufficient service for Lathrop, Missouri, with a population of 1,000.

In *Illinois Central Railroad v. Illinois*, 163 U. S. 142, the Railroad Company stopped six of its daily passenger trains at Cairo, Illinois, a city of 14,548 population, and the Court held that it could not be required to re-route one of its fast interstate trains to make it run into the regular station and stop for passengers.

The above are but a few of the many cases, all of which, except the Illinois case last cited, involve simply the question of stopping interstate trains at sta-

tions through which they necessarily pass. In the present case the order not only requires these interstate trains to stop at Caruthersville, but requires the Company to re-route these trains, making them lose thirty-five to forty-five minutes of their schedule time, notwithstanding Caruthersville is on a branch line and already has 14 passenger trains in and out each day.

"While * * * railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchise but who may have contributed largely to the construction of the road, they are bound to do no more than this, and may then provide special facilities for the accommodation of through tra.c. * * *. After all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic, and legislative interference therewith is unreasonable, and an infringement upon that provision of the Constitution which we have held requires that commerce between the States shall be free and unobstructed."

Cleveland etc. Railway Company v. Illinois,
177 U. S. 514, l. c. 521, 522.

(b) The order requires interstate passengers using said interstate trains to travel to their detriment approximately 10 miles off their regular course and pay extra fare for such diversion without any corresponding benefit to them.

The Supreme Court of Missouri held that (111-112) "It is self-evident that if the order complained of affects interstate commerce at all, it does not do so directly, or as the gist of the matter, but only indirectly and incidentally," and further held "that interstate commerce will be benefited by the order."

In reaching this conclusion the Court's reasoning apparently proceeds upon the erroneous theory that the **quantity** of interstate commerce interfered with and burdened rather than the **fact** that interstate commerce is interfered with and burdened is controlling, and in order to arrive at the quantity of interstate traffic it considers as interstate passengers only those traveling from St. Louis to Memphis. The Court overlooked the fact that every passenger north of Caruthersville destined to Memphis or points beyond, and every passenger out of Memphis destined to points north of Caruthersville is an interstate passenger. The commerce clause of the Constitution operates in favor of one passenger as much as it does in favor of a hundred. A train carrying one passenger in interstate commerce is as much engaged in such commerce as if it carried a hundred such passengers, just as a freight train carrying

one article in interstate commerce is as much engaged therein as if it carried fifty train loads.

Interstate passengers on trains 801 and 802 under this order are compelled to deviate from the main line, travel 10 miles out of their course (57), lose from 35 to 45 minutes time in so doing (60) and pay an additional fare for the extra 10 miles transportation (57). They are not only subjected to these inconveniences and expenses, but to the further probable inconvenience as shown by the record of missing their connections at St. Louis for points beyond or at Memphis for points beyond. The demands of the citizens of Caruthersville, not for additional train service, but that trains 801 and 802 shall pass through that City, should not be permitted to outweigh these expenses and inconveniences to interstate passengers. The Supreme Court of Missouri is in error in assuming that the order "does not directly affect interstate commerce or impose an undue burden upon it, but on the contrary that interstate commerce is benefited by the order".

(c) The order destroys or seriously affects plaintiff in error's interstate connections at St. Louis, Missouri, and Memphis, Tennessee.

The purpose in diverting trains 801 and 802 from Caruthersville is shown by the testimony of the Railroad Company's General Passenger Agent who stated it to be to make these trains serve the purpose for

which they were originally put on—that is, to take care of the through traffic and all of the local traffic as well as possible (69). These trains were already scheduled as fast as they could safely be run and at the same time perform the work assigned to them (60). They necessarily had local service as well as through service, and this fact materially lengthened their schedules. In performing this service they are required to make approximately 60 stops between St. Louis and Memphis (72).

The serious manner in which St. Louis and Memphis connections are interfered with by the order is as follows: The distance between Memphis and St. Louis is 305 miles (69). Train 801 leaves St. Louis at 8 a. m., and arrives in Memphis at 8:10 p. m. The most important connection out of Memphis for 801 is the Frisco connection for Birmingham, Atlanta, Washington and New York. That train leaves Memphis at 9 p. m., and unless 801 was exactly on time, the train for the South has to be held for it (68). The Louisville and Nashville leaves Memphis for Nashville, Louisville and Cincinnati at 8:20 p. m., and this is an important connection for the people along the line of the Frisco in Arkansas (68). There is a transfer between the Frisco station and the Louisville & Nashville station at Memphis, the distance being four blocks (68). As the matter now stands, the Frisco misses connection with the Southern Railway at

Memphis (68). Train 802 leaves Memphis at 7:34 a. m. and arrives at St. Louis 8:35 p. m. The Frisco train No. 7 leaves St. Louis at 8:37 p. m., and this is the train that takes passengers to Springfield, Monett, and that section of the country from points in Missouri (68). The connections now between 802 and a great many lines at St. Louis is very close, and 35 to 40 minutes is not enough time for passengers to make their proper arrangements on arriving at a big terminal like St. Louis (69). The change in the schedule of these trains necessarily inconveniences the local people along the line as a whole, and the Frisco has been petitioned by the patrons of other towns, especially between Sikeston and Cape Girardeau, and in that section of the state, to get train 802 into St. Louis earlier (69).

The testimony further shows that the Illinois Central is a strong competitor of the Frisco between St. Louis and Memphis, operating high local passenger service in Tennessee and Illinois, and that line is enabled to perform more local service to relieve the work of the through trains than is the Frisco, and therefore to require these trains to run *via* Caruthersville would operate still further in favor of the Illinois Central, to the detriment of the Frisco (77).

“We are not obliged to shut our eyes to the

fact that competition among railways for through passenger traffic has become very spirited, and we think they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evident, however, that neither the greater safety of their tracks, the superior comfort of their coaches or sleeping berths, or the excellence of their tables, would insure them such share, if they were unable to compete with their rivals in the matter of time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transportation, both by land and water. The public demand this; the railway and steamship companies are anxious in their own interests to furnish it, and local legislation ought not to stand in the way of it."

Cleveland, etc., Railway Company v. Illinois
177 U. S. 514, *l. c.* 521, 522.

"The transportation of passengers on interstate trains as rapidly as can, with safety be done, is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and, at times, bitter. Each line must do its best even to obtain its fair share of the transportation between States, both of passengers and freight. A wholly unnecessary, even though a small obstacle, ought not, in fairness, to be placed in the way of an interstate road, which may thus be unable to meet the competition of its rivals. We by no means intend to im-

pair the strength of the previous decisions of this court on the subject, nor to assume that the interstate transportation, either of passengers or freight, is to be regarded as overshadowing the rights of the residents of the State through which the railroad passes to adequate railroad facilities. Both claims are to be considered, and after the wants of the residents within a State or locality through which the road passes have been adequately supplied, regard being had to all the facts bearing upon the subject, they ought not to be permitted to demand more, at the cost of the ability of the road to successfully compete with its rivals in the transportation of interstate passengers and freight."

Mississippi R. R. Commission v. Illinois Central R. R. Co., 203 U. S. 335, *l. c.* 346, 347.

(d) The order unnecessarily requires the expenditure of over a hundred thousand dollars for placing the track between Hayti and Caruthersville and between Grassy Bayou and Caruthersville in proper condition for safe operation of these interstate trains on reasonable schedules.

The record shows that the distance from Hayti to Caruthersville is a little over 7 miles, and the distance from Caruthersville to Grassy Bayou is a little over 9 miles (28). It would cost from \$6,000 to \$7,000 a mile to put this trackage in as good condition as the main line for handling the heavy trains 801 and 802 (74).

On this basis it will be seen that it is necessary to expend at least one hundred thousand dollars for that purpose exclusive of maintenance charges, interest on investment and other like items of expense. This is an enormous burden placed upon this interstate line of railroad not only without any corresponding benefit, but on the contrary attended by the disadvantages hereinabove stated.

(c) The order is solely in the interest of Caruthersville and in total disregard of the rights of other cities and of the citizens thereof. It does not rest upon the bona fide exercise of the police power of the State.

The citizens of Caruthersville assign as one reason why trains 801 and 802 should run through that city, that with existing service farmers have to get up early in the winter time in order to come to Caruthersville to trade. The witness who so testified admitted that the service was very convenient for the same farmers in the summer time (43). Must the railroad company have its trains run on one schedule in the summer and another in the winter, to meet individual conveniences of the various classes of patrons along its line who desire to transact business at Caruthersville? Must the Railroad Company so run all its trains that they will arrive at and depart from Caruthersville at a time designated by that city?

Such service would doubtless be satisfactory to Caruthersville, but productive of much complaint from other cities along the line.

Complaint was made that citizens of Caruthersville and persons coming to Caruthersville had to change cars at Hayti (26). That is no justification for the order made by the Commission; it is a natural and necessary incident and inconvenience attaching to passenger service to and from branch line points. The record is barren of testimony tending to prove that the facilities furnished by the Railroad Company to Caruthersville are inadequate to carry all persons to and fro offering themselves as passengers. One cannot read this record without concluding that the basis of the complaint rests upon purely selfish commercial grounds, and that such arguments as the inconvenience of early rising, changing cars, and character of the equipment of the trains are purely trivialities. Men have to change cars somewhere in journeying over the State if they chance to live on a branch line. Men have to get up early in the morning and stay up late at night some time if they travel from one point to another, and there is no reason why citizens of other portions of the State should be required to get up early and stay up late in order that the citizens of Caruthersville may get up late and go to bed early. Caruthersville cannot invoke the "convenient apologies of the police power" to change these conditions.

“It is to be remembered that this statute (a statute requiring interstate trains to stop) is not of that class passed in the exercise of the police power of the State for the promotion of the public safety and requiring the stoppage of trains by one railroad before crossing the tracks of another—this statute, as its second section shows, was passed for the purpose of providing greater facilities of travel and not for the protection of life and limb.”

Herndon v. Chicago R. I. & P. Railway Company, 218 U. S. 135, *l. c.* 157, 158.

“The decisions also show that a State cannot avoid the operation of this rule by simply invoking the convenient apologetics of the police power. It repeatedly has been said or implied that a direct interference with commerce among the States cannot be justified in this way. ‘The State can do nothing which will directly burden or impair the interstate traffic of the company or impair the usefulness of its facilities for such traffic.’ ”

Kansas City Southern Railway Company v. Kaw Valley District, 233 U. S. 75, *l. c.* 79.

It is respectfully urged that the judgment of the Supreme Court of Missouri be reversed.

WILLIAM F. EVANS,

EDWARD T. MILLER,

Counsel for Plaintiff in Error.

Office Supreme Court, U. S.
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NO.  117

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY
PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF THE STATE
OF MISSOURI, DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of Missouri.

Brief of Defendant in Error

R. PERRY SPENCER,
JAMES D. LINDSAY,
of Jefferson City, Missouri,
Attorneys for Respondent.

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NO. 393.
IN THE
Supreme Court of the United States
OCTOBER TERM, 1919.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY
PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF THE STATE
OF MISSOURI, DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of Missouri.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT.

The plaintiff prosecutes this writ for the purpose of setting aside a decision of the Supreme Court of Missouri affirming the judgment of the Cole County Circuit Court, which sustained an order of the Public Service Commission, effective June 20, 1915, requiring plaintiff in error to run its train numbered 801 and 802, through the City of Caruthersville, Missouri, for the taking on and letting off of passengers at said city. The order required the running of said two trains along the curve in the line as originally built and operated through said city, instead of along a cut-off line constructed later.

The main line of railway involved extends from St. Louis, along the west side of the Mississippi River to Memphis a distance of three hundred and five miles. Caruthersville, the county seat of Pemiscot County, is situated on the River

and is two hundred and twenty miles south of St. Louis. It is very near the southeast corner of Missouri. It has a population approximating five thousand. It is the second city in population and trade importance on plaintiff's line between St. Louis and Memphis, being surpassed by Cape Girardeau only (70). It is the trade center of a wide, rich and rapidly developing territory. Travelers out of Caruthersville purchase from plaintiff more than seven thousand tickets monthly, yielding average aggregate receipts of \$4,000 monthly, or \$48,000 annually (44). Plaintiff's receipts at Caruthersville, from freight business, average \$18,000 monthly, or \$216,000 annually. Its total annual revenue at said city is thus shown to be \$264,000 (45). Its passenger station at Caruthersville, erected about the time of the making of the order, cost \$12,000.

As plaintiff's line was originally constructed, it curved from the station known as Hayti, in a southeasterly direction, about six miles, to Caruthersville, thence curved south-westerly about nine miles, to the point called Grassy Bayou. In 1904, plaintiff's parent predecessor company constructed a cut-off line between Hayti and Grassy Bayou, a distance of seven miles. The citizens of Caruthersville contributed substantially in procuring the right-of-way for the cut-off, which shortened by nearly ten miles the main line of the railway for trains not passing through Caruthersville. Plaintiff's system covers and controls transportation in the territory tributary to Caruthersville.

In the territory adjacent to Caruthersville, plaintiff's system comprises three north and south lines, and two east and west lines. The north and south lines are: First, the main line above mentioned; second, a branch line twelve miles west of Caruthersville passing through the town of Pascola; third, a branch line, twenty-five miles west of Caruthersville, passing through the town of Kennett.

An east and west branch line extends from Hayti, westward through Pascola to Kennett. Twelve miles north of Kennett, another east and west branch line connects between Gibson and Tallapoosa, the second, and third north and south lines above mentioned.

Plaintiff runs two through passenger trains daily each way between St. Louis and Memphis; said trains 801 and 802,

which are day trains, and trains 805 and 806, which are night trains. Trains 805 and 806 were routed over the cut-off, and did not pass through Caruthersville. Trains 801 and 802, routed through Caruthersville, continued to run through the city for nine years after the cut-off was constructed. In the period mentioned, the track along the line through Caruthersville, between Hayti and Grassy Bayou, was permitted to go without proper repairs. In August, 1913, trains 801 and 802 were routed over the cut-off, and ceased to run through Caruthersville. Under the schedule then put into effect, 801 leaves St. Louis at eight o'clock a. m., arrives at Hayti at 4:00 p. m. and reaches Memphis at 8:10 p. m., while train 802 leaves Memphis at 7:45 a. m., arrives at Hayti at 11:45 a. m., and reaches St. Louis at 8:35 p. m.

Under the old schedule, trains 801 and 802 left the respective points of departure, St. Louis and Memphis, at nearly the same time as under the new, but were thirty minutes later in reaching their respective destinations, by reason of the additional distance of nine or ten miles traveled in passing through Caruthersville.

When trains 801 and 802 ceased to pass through Caruthersville, branch line and shuttle trains were put into service between Caruthersville and Hayti to connect with trains 801 and 802, and new trains known as No. 825 and No. 826 were put into service and operated between Blytheville, Arkansas, and Cape Girardeau, Missouri, situated north of Caruthersville, by way of Caruthersville and Hayti, and by way of Kennett.

A Pullman car has all of the time been operated in and out of Caruthersville to Hayti, to connect with the through night trains 805 and 806.

South of Caruthersville, in the same county, on plaintiff's main line, are located Holland, with a population of one thousand, and Steele, with a population of fifteen hundred (48). It appears from the record that two-thirds of the county travel to and from Caruthersville used trains 801 and 802 (47-48); and that more than one-half of all the travel in and out of that city, used said trains 801 and 802, each one of which carried from twenty-five to one hundred Caruthersville passengers (49). It was shown that the travel to and from Memphis, eighty-five miles away, was great, and that trains 801

and 802, as operated through Caruthersville, were very convenient, and as operated over the cut-off, were inconvenient, involving to passengers coming to Caruthersville, from the north, or going thence to the south, additional mileage, increased fares and much additional time and annoyance in waiting and changing at Hayti.

Plaintiff's station agent at Caruthersville (44-45), testified that he sold seventy-five tickets, or better, on an average to points in this State, daily. The total average daily sales of tickets, to all points, one-thirtieth of seven thousand, would be two hundred and thirty-three.

The number of daily sales made to points in the State prior to the change in the routing of trains 801 and 802, was unknown to the agent, but, another witness (41) testified that in his opinion the change in the trains had decreased the number of people who came to Caruthersville from the southern end of the county by fifty per cent. (41.)

The showing made by plaintiff was that fourteen passenger trains, in all, operate in and out of Caruthersville under the new arrangement.

Two of these consist of the train numbered 881 and 882, which as 882 leaves Caruthersville at 5:50 a. m. and runs to the west and north, over plaintiff's branch lines through Hayti, Kennett, Gibson, Clarkton and Brooks Junction to Cape Girardeau, and as 881 returns to Caruthersville in the evening.

Two others are trains 825 and 826, which operate between Cape Girardeau, in Missouri, and Blytheville, in the northeast corner of Arkansas, and which also run by way of Kennett and over some of the numerous branch lines hereinbefore described. These trains, 825 and 826, are designated by the witnesses as the "Bull Moose." (28). They bring few people to Caruthersville except during the sessions of the Court (47). These are interstate trains, because they reach Blytheville, in Arkansas (56).

Two others are the trains numbered 821 and 822 which run from Caruthersville, by way of Hayti to Turrell, Arkansas, where the cars which compose them are taken up by a train on another line running into Memphis. The eight other trains which go to make up the total of fourteen, consist of what is spoken of by the witnesses as "Ham's Train" (22, 52). This

train denominated "Ham's Train" by the witnesses, is numbered 891, 892, 893, 894, 895, 896, 897 and 898, and this train runs in and out of Caruthersville, to and from the near-by small towns to the west, upon the network of branch lines operated by plaintiff and hereinbefore described (56).

The movements of this train (Ham's Train), are described in detail by plaintiff's superintendent (52, 53). It arrives at Caruthersville at 11:05 in the morning as train 893, remains at Caruthersville ten minutes and goes to Hayti, and there meets train 802, the through train from Memphis to St. Louis. It then comes back to Caruthersville at 12:20, as train 892, leaves Caruthersville at 12:30 and goes to Kennett by way of Hayti. It leaves Kennett at 1:50 p. m. as train 891 and comes back to Caruthersville at 3:20 p. m. It leaves Caruthersville at 3:30 p. m. and goes to Hayti as train 896. At Hayti it meets train 802, the through train from St. Louis to Memphis, and leaves Hayti at 4:15 p. m. as train 897, and returns to Caruthersville. It again leaves Caruthersville as train 898 and goes to Kennett, "and from there to Senath, and from Senath back through Kennett, and on to Campbell, and ties up for the night."

All of these fourteen trains are of inferior equipment. The cars are old, dirty and without conveniences (20, 21, 25), and these trains are all typical branch line trains, doing distinctively a local, branch line service.

The character of these trains, and the schedules upon which they are run show lack of convenience, and inadequate service furnished at Caruthersville for the major portion of the travel in and out of that city; that is, the travel upon plaintiff's main line, and particularly to the south.

This inconvenience in using the two highly necessary trains of plaintiff, trains 801 and 802 routed over the cut-off, with the discrimination thereby created, and the damage thereby inflicted upon the community, second in importance upon plaintiff's main line, constitute the grounds of the complaint. This the order of the Commission was designed to remedy.

The Character of the Trains Involved in the Order.

Trains 801 and 802 are interstate trains in that they are operated between St. Louis and Memphis. However, they are both day trains. They do a local business throughout their runs. They make fifty regular stops, and eleven other stops on flag. (72). The average speed per hour of trains 801 is 25.36 miles and the average speed per hour of train 802 is 23.88 miles. These trains carry a baggage car, mail car, coaches and a dining car, but no Pullman cars. The amount of through traffic done by these trains is negligible. (77, 78) Concededly, the traffic of that character is almost wholly done by trains 805 and 806, which have an average speed per hour respectively of 29.71 miles and 29.81 miles, and carry Pullman cars between St. Louis and Memphis.

The Nature of the Complaint.

The gist of the complaint, developed before the Commission as appears by the record, is not insufficiency of service between Caruthersville and the points of plaintiff's branch lines nearby to the west and northwest, but the inadequacy and inconvenience of the service on plaintiff's main line to the principal intra-county towns to the south, Holland and Steele, and to the great terminal points, St. Louis and Memphis, especially Memphis. (19, 20, 21, 30).

The evidence is uncontradicted that the greater volume of the travel and trade relations of Caruthersville are toward the south, on the main line. It is equally clear that trains 801 and 802 have been the vehicles by which this travel and trade communication have been accommodated; and, considering the relative distances of Caruthersville from St. Louis and Memphis out of which these trains must respectively depart in the morning of each day, they must necessarily be, and continue to be, the convenient and important means of transportation for the Caruthersville community.

The re-routing of these trains away from Caruthersville, and the substitution of a purely "branch line" service to that city, were considered by the Public Service Commission and

by the Supreme Court of Missouri to be insufficient to meet the reasonable requirements of the community, and incompatible with plaintiff's duty as a common carrier.

BRIEF AND ARGUMENT.

The order of the Commission is a requirement, necessary, and reasonably adapted, to the attainment of proper local service, and facilities not otherwise adequately provided by plaintiff, and is not a regulation of, an interference with, or an undue burden, upon interstate commerce.

Lake Shore & Michigan Southern Railway Co. vs. Ohio, 173 U. S. 285.

Houston & Texas Central Railroad vs. Mayes, 201 U. S. 328.

Atlantic Coast Line R. R. Co. vs. North Carolina Corporation Com., 206 U. S. 1.

Mississippi Railroad Commission vs. Illinois Central Railroad 203 U. S. 335.

Atlantic Coast Line vs. Wharton 207 U. S. 328.

Missouri Pacific Railway vs. Kansas, 216 U. S. 262.

Chicago, Burlington & Quincy R. R. Co., vs. Railroad Commission 237 U. S. 220.

Mississippi Railroad Commission vs. Mobile and Ohio Railroad Co. 244 U. S. 388.

Missouri, Kansas & Texas R. R. vs. Texas 245 U. S. 484.

Gulf, Colorado & Santa Fe Ry. vs. Texas 246 U. S. 58.

(a.) Caruthersville does not have reasonable passenger train facilities aside from interstate trains, 801 and 802. The routing of these two trains through that city is the practical and reasonable remedy.

(b.) The existing service causes passengers, interstate and intrastate, using said trains between Caruthersville and the south, the most frequent use made, to travel four or more miles unnecessarily at their cost with added loss of time and inconvenience in changing trains at Hayti.

(c.) The order has no serious effect upon plaintiff's interstate connections at St. Louis and Memphis, because trains 801 and 802 do an essentially local business.

(d). The expense of putting plaintiff's tracks in a condition between Hayti and Caruthersville and between Caruthersville and Grassy Bayou, fifteen or sixteen miles, not exceeding \$2,000 to \$6,000 per mile (74), is a reasonable expense to incur in view of the great volume of business done by plaintiff at Caruthersville; and plaintiff cannot escape the performance of this duty by pleading this expense.

(e). The order is not solely in the interest of Caruthersville, but is necessary for the convenience and interests of many other considerable communities.

(f). Plaintiff cannot arbitrarily and unreasonably "pick and choose" certain communities it will serve, and others it will neglect, in the territory covered by its franchise.

New York & Queens Gas Company vs McCall. 2
U. S. 345-351.

The foregoing will be considered in their order with such references to the facts in the record as seem necessary.

This Court in its opinion in the suit of Chicago, Burlington & Quincy Railroad Co. vs. Wisconsin Railroad Commission 237 U. S. 220, concisely set forth the rules which govern in the determination of this case, and of all cases of this character.

The Court at page 226 said:

"In reviewing the decision we may start with certain principles as established: (1) It is competent for a State to require adequate local facilities, even to the stoppage of interstate trains or the re-arrangement of their schedules. (2) Such facilities existing—that is, the local conditions being adequately met—the obligation of the railroad is performed, and the stoppage of interstate trains becomes an improper and illegal interference with interstate commerce. (3) And that whether the interference be directly by the legislature or by its command through the orders of an administrative body. (4) The fact of local facilities this court may determine, such fact being necessarily involved in the determination of the Federal question whether an order concerning an interstate train does or does not directly regulate interstate commerce by imposing an arbitrary requirement."

Therefore, the primary subject for consideration here is the local facilities. What is adequacy of service must be

ertained for each case according to the circumstances. It is not settled by the mere number of trains entering the local station. Plaintiff lays much emphasis upon the fact that four or five trains operate through Caruthersville; that is, seven enter and seven go out of the city, daily. But most of these are limited in their movements to the net work of branch lines in nearby territory.

The issue here is as to service in other directions, service on Plaintiff's main line. The movements of the train between Blytheville, Arkansas, and Cape Girardeau, Missouri, led the "Bull Moose," and of that other train, known as "Sam's train," which has its exits and its entrances, and in time plays many parts, are impressive in their aggregated number, but they do not render the requisite service where service is most needed.

The record shows that three-fourths of the local railroad trade to Caruthersville comes from the South from the communities centered about the towns of Holland and Steele, and that the arrangement complained of by reason of delay, cost and inconvenience, diverts probably one-half of that trade from Caruthersville. It is equally clear that this preponderance of trade relation and travel toward the South extends to Memphis. With St. Louis two hundred and twenty miles distant, and Memphis only eighty-five miles away, the condition presented is controlling and permanent. For the same reason the trains under consideration, now numbered 801 and 802, which run in the daytime between the two cities, serving all local stations, must continue to be the trains of most importance to the community at Caruthersville, and to all the communities adjacent, on the main line.

The routing of these two trains through Caruthersville is required to meet the necessities and the requirements of the public. The fact that for nine years they were so operated is significant and strongly persuasive. The new service does not meet the requirements. It works manifold injuries, delays and inconveniences to those from whom Plaintiff derives a great volume of revenue. It disarranges the seasonable arrival and departure of the mails. It diverts trade in a material, and in an unnatural way, from a city which has helped to build up and support the Plaintiff Company, and which by the

circumstances is dependent upon Plaintiff for adequate transportation facilities.

The additional distance, the additional time, and the expense of maintaining a suitable track required to render the necessary service, do not constitute a valid objection.

"Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve, and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render." *New York & Queens Gas Co. vs. McCall* 245, U. S. 1. c. 351.

The Commission Applied the Appropriate Remedy.

Plaintiff suggests that if Caruthersville has not reasonable passenger facilities aside from trains 801 and 802, the running of those trains should not have been rearranged, but that the company should have been given opportunity to furnish additional trains.

The order of the Commission was designed to remedy the insufficiency shown to exist. It requires the specific service by the particular train, which must be operated at all even and which can most effectively render that service. This was the reasonable thing to do, and not, as Plaintiff suggests, require the operation of additional trains to render this service.

The facts widely distinguish this case from the case *Atlantic Coast Line vs. Wharton*, 207 U. S. 328, cited by Plaintiff, in this connection. It is true the Court in the case mentioned, after reciting certain deficiencies complained of, such as "dirty" cars, and lack of "proper closets and drinking tanks," said at page 335: "These deficiencies are remedied by other means than the stoppage of the trains in question."

But, the Court continued, saying:

"It is to be remembered that these two places, Latonia and Clio, had together a population by the last census of about a thousand. Two ordinary modern trains of the usual coach type would comfortably transport the total population of the places."

It also appears that the two trains under consideration in the *Wharton* case were through fast trains running from Jersey

to Tampa, and, as the Court said, page 331: "The distance from Jersey City to Tampa is about twelve hundred miles, and the trains 32 and 35 are among the fastest and longest continuous trains in the whole country, exceeding the distance from New York to Chicago. These trains rank with the very best trains run anywhere."

It appears also that the demand for passage on those trains from Latta and Clio was very small, not more often than three or four times a week, and other through rapid trains afforded ample local facilities. That which was said in the Barton case, pertinent to that case, is inapplicable here.

The Existing Service causes Passengers using said Trains, between Caruthersville and the South, the Most Frequent Use made, to Travel an Additional Distance, and change Trains at Hayti.

The fact is urged that the order requires passengers on trains 801 and 802, traveling between points north of Hayti, and points South of Grassy Bayou, to travel nine miles farther than they would if the trains were routed over the cutoff.

But, on the other hand, if these trains are run over the cutoff, passengers traveling between Caruthersville and the South must travel the additional distance in going by Hayti, not less than four miles, and be subject to the delays and inconvenience incidental to a change of trains. And, the record shows plainly the volume of travel between Caruthersville and the south is far greater than that toward the north.

The Order Has no Serious Effect Upon Plaintiff's Inter-city Connections at St. Louis and Memphis.

Plaintiff introduced evidence as to the time of arrival of trains 801 and 802 at their terminals and the times of departure of certain trains on other lines, and that the loss of time involved in going through Caruthersville affected connections with other lines.

But, the evidence shows that these trains do an essentially local business, that they make sixty stops between St. Louis and Memphis, and carry few through passengers between those cities. No evidence was offered by Plaintiff to show the extent to which passengers on these trains actually missed desired connections with other trains at Memphis, or at St. Louis.

The Expenses of Placing Plaintiff's Track in Good Condition along the Curve is not a Sufficient Reason for Denying the Service.

The expense involved in obeying the order may be taken into consideration, but it is not a controlling factor. The large returns received by Plaintiff from its business at Caruthersville must be taken into consideration.

That it costs something to comply with an order of this kind under consideration does not render the order legally unreasonable.

Atlantic Coast Line vs. North Carolina Corporation, Commission, 206 U. S. 1, 24-6. Missouri Pacific Ry. Co. vs. Kansas, 216 U. S. 262. Puget Sound Traction Co. vs. Reynolds, 244 U. S. 575, 580.

The testimony was that the track along the curve could be put in good condition, though not as good as the main line, for an outlay of \$2,000.00 per mile (74).

The Order is not Solely in the Interest of Caruthersville.

It cannot be maintained, as is contended by plaintiff, that the benefits of the order accrue solely to Caruthersville; that it benefits no other communities or persons, and that it injuriously discriminates against other communities.

The benefits to other communities arise inevitably out of the conceded fact that a greater number of persons of other communities use these trains than any other to enter and leave Caruthersville; and that an even greater number would so use them if the order be sustained than do now.

It is specifically asserted that Hayti is made the object of improper discrimination under the order. But, the order does not take away from Hayti the service of these trains. The order leaves Hayti as it was before the change; and with substantially the same facilities as would be furnished to Holland and Steele, towns of approximately the same population as Hayti.

It is urged that Hayti has a "natural advantage." But the truth is, Hayti has an unnatural advantage, not due to

natural location, but solely to plaintiff's failure to render a due measure of service to Caruthersville.

Summary.

This case is here because the trains affected by the order are interstate trains. The determinative matters to be considered include, as was said in *Atlantic Coast Line vs. Wharton*, 207 U. S. 334, the "adequacy of local facilities," and, "the nature of the order, the character of the interstate commerce train to which it applies, and its necessary and direct effect upon the operation of such train."

The following contentions are either concededly true, or, at all events where in dispute, are borne out by the record:

1. Caruthersville is the second city in population and amount of business done on plaintiff's main line, between St. Louis and Memphis.

2. Except for the purposes of fast through passenger service and fast through freight transportation, Caruthersville must be regarded as being on the main line.

3. The service furnished to Caruthersville by the substituted service, consisting of branch line trains operating in and out of Caruthersville, chiefly into and through the nearby towns west of the main line, is not adequate, or convenient to meet the reasonable demands for service north and south on the main line.

4. Trains 801 and 802 are and must continue to be essentially local trains, running on a slow schedule, and serving all of the sixty or more points between St. Louis and Memphis.

5. These trains carry few through passengers, and carry few interstate passengers except for short distances and as local business.

6. It is practicable and reasonable to require these trains to render direct through service to Caruthersville.

The circumstances of this case make peculiarly applicable here, the utterances of this court in *Lake Shore & Michigan Southern Railway vs. Ohio*, 173 U. S., where, at page 302, it is said:

"In the absence of legislation by Congress, it would be going very far to hold that such an enactment as the one before us was in itself a regulation of interstate commerce. It

was for the state to take into consideration all the circumstances affecting passenger travel within its limits, and as far as practicable make such regulations as were just to all who might pass over the road in question. It was entitled of course to provide for the convenience of persons desiring to travel from one point to another in the state on domestic trains. But it was not bound to ignore the convenience of those who desired to travel from places in the state to places beyond its limits, or the convenience of those outside of the state who wished to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those who desired to pass through the state without stopping. Any other view of the relations between the state and the corporation created by it would mean that the directors of the corporation could manage its affairs solely with reference to the interests of stockholders and without taking into consideration the interests of the general public. It would mean not only that such directors were the exclusive judges of the manner in which the corporation should discharge the duties imposed upon it in the interest of the public, but that the corporation could so regulate the running of its interstate trains as to build up cities and towns at the ends of its line or at favored points, and by that means destroy or retard the growth and prosperity of those at intervening points. It would mean also that beyond the power of the state to prevent it the defendant railway company could run all its trains through the state without stopping at any city within its limits however numerous its population, and could prevent the people along its road within the state who desired to go beyond its limits from using its interstate trains at all or only at such points as the company chose to designate. A principle that in its application admits of such results cannot be sanctioned."

The Supreme Court of Missouri, upon a most thorough examination of the facts, reached the conclusion that the order of the Public Service Commission in the instant case was in "aid of interstate commerce."

Counsel for plaintiff contend that in doing so the Court "proceeded upon the erroneous theory that the *quantity* of interstate commerce interfered with and burdened rather than

the fact that interstate commerce is interfered with and burdened is controlling." And counsel further say "the commerce clause of the Constitution operates in favor of one passenger as much as it does in favor of a hundred."

But if the larger number of interstate passengers from Memphis or points in Arkansas, traveling on train 802, were destined to Caruthersville, must no consideration be given to them, and sole consideration given to a lesser number who were destined to points beyond?

A study of the decisions of this Court in cases of this character leads to the conclusion that in the opinion of the Court, what is, or what is not an interference with interstate commerce is a practical conception.

This court in *Public Utilities Commission vs. Landon*, 249 U. S. 1. c. 245, said:

"Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

Likewise, in cases of the character of the case at bar, the Court examines primarily the local facilities, and next the extent and character of the interference with interstate commerce that may be involved. This latter is viewed not as a naked and severely technical subject, but, as a practical conception, and what constitutes an interference with or burden upon interstate commerce must be determined upon consideration of established facts and known transportation methods.

The defendant in error respectfully urges that the judgment of the Supreme Court of Missouri be affirmed.

R. PERRY SPENCER,
JAMES D. LINDSAY,
Counsel for Defendant in Error.

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Opinion of the Court.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY v. PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

No. 117. Submitted December 9, 1920.—Decided January 17, 1921.

An order of a state public service commission requiring an interstate railroad to detour two of its through passenger trains from its main line over a branch for the benefit of a small city already adequately served by local, connecting trains, *held*, void as an undue burden on interstate commerce. P. 536.

277 Missouri, 264, reversed.

THE case is stated in the opinion.

Mr. William F. Evans and *Mr. Edward T. Miller* for plaintiff in error.

Mr. James D. Lindsay for defendant in error. *Mr. R. Perry Spencer* was also on the brief.

MR. JUSTICE McREYNOLDS delivered the opinion of the court.

Plaintiff in error's main line extends from St. Louis to Memphis—305 miles. As originally constructed it turned sharply southeastward at Hayti, Missouri—220 miles from St. Louis—ran thence seven miles to Caruthersville, a city of four thousand people, thence southwestward nine miles to Grassy Bayou and thence south. A "cut-off" between Hayti and Grassy Bayou—six miles—became part of the main line in 1904 and thereafter through freight and night passenger trains passed that way. The through day passenger trains—Nos. 801 and 802—continued to